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**Human Rights Council**
**Twenty-sixth session**
Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04164
*1404164*

Please recycle

# ASIA: Independence of judiciary, a mirage in South Asia

1. The arbitrary dismissal in January 2013 of the former chief justice of Sri Lanka, Dr. Shirani Bandaranayake, the first female Chief Justice in South Asia, reflects the independence of judiciary in the region. Though conditions prevailing in Sri Lanka are not exactly the same in the other South Asian countries of India, Nepal, Bangladesh, and Pakistan where the Asian Legal Resource Centre is engaged, the fact is that the judiciary in all these countries is reduced to an institution that is unable to independently deliver upon its mandate.

2. In Sri Lanka and Bangladesh, the judiciary has been reduced to a subordinate entity of the state, where the concept of separation of powers is at its lowest ebb if not absent. In India, though the judiciary is largely independent of executive control, its daily functioning is subjugated to the government, manifest in lack of adequate resources that have resulted in scandalous delay in adjudication. In Nepal, an acute situation exists, where even the appointment of judges and officers required for the judiciary to function meaningfully has not been done for the past four years. In Pakistan, the trend is on the upswing from abysmal depths, with the judiciary having begun to carve out some contours of fundamental independence, having been freed from six decades of military dictatorship.

3. The concept of independence of the judiciary is not a silo that depends upon the nature of the judges alone. Independence of the institution is also closely related to the legislative framework within which the judiciary is to act: the support the institution receives from the government; the cooperation that the judiciary seeks and obtains from other executive organs of the state, including the investigating agency; and the extent to which the institution is able to exercise its independent writ upon other institutions of the state, most importantly, in the South Asian context, upon the armed forces of the state.

4. Over the past decade, concerns of national security have substantially reduced the reach of judicial writ upon the organs of the state. Human rights abuses committed by state agencies, including arbitrary and or incommunicado detention, torture, and extrajudicial execution, are exempted by statute from judicial review in the region.

5. Furthermore, certain legislations provide for long periods of detention of persons without the possibility of being produced before a judicial officer. Governments pass most of these legislations, including amendments to the constitution, without public consultation. In all these countries such legislations have also contributed substantially to widespread disappearances, a serious issue upon which courts have the least influence.

6. In Sri Lanka and Bangladesh, amendments have been made to existing legislations that prevent the judiciary from reviewing state actions on the excuse of executive immunity. In India and Pakistan, state security legislations and special laws concerning armed forces of the state exempt judicial intervention in cases involving the armed forces and law enforcement agencies of the state. In Nepal, judicial writ is often ignored by the state, and the government intentionally fails to comply with judicial decisions.

7. Today, these states are clinically reducing the space for open criticism against state actions. Amongst of the worst affected are human rights defenders speaking on behalf of victims of human rights abuse. Draconian legislations, like the national security laws, allow the states to fabricate criminal charges against human rights defenders. And, the judiciary is increasingly finding no space to intervene, due to ouster clauses built into these legislations.

8. Equally important is the absence of accountability and transparency within the judiciary itself. Appointments, promotions, and transfers of judges are a closed process in all the above countries. It has resulted in genuine accusations of corruption and nepotism, most of which have failed to be investigated or acted upon.

9. In countries where judicial independence is seriously hampered, the concept of fair trial has no meaning. Constituting an independent judiciary is a political policy that state must evolve and resolve. Unfortunately, such a resolution is not anywhere close to fruition in South Asia.

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Please recycle

# ASIA: Council should do more to end extrajudicial execution

1. Despite having some of the most stable and rapidly developing countries in the world, Asia is notorious for extrajudicial executions. Both state and non-state actors commit these crimes. As in all human rights abuses committed by state agencies, when it comes to extrajudicial executions, Asian states lack prompt and independent investigation and adjudication modalities.

2. This written submission refers to conditions in Bangladesh, Myanmar, Cambodia, People's Republic of China, India, Indonesia, Nepal, Pakistan, Thailand, and the Philippines; it does not refer to the jurisdictions of the Republic of Korea, Japan, and Hong Kong, which are comparable in accountability to countries that can take pride in their rule of law regimes.

3. In the former list of countries, the normative framework of the rule of law does not exist. The practice of torture, which often relates to deaths in custody or extrajudicial executions, is common to these states. The central deficit in state policy – that results in an alarming number of extrajudicial executions committed by state agencies – is the unwillingness of these states to change the institution of police from state-sponsored terror creating machines to those that provide services to all citizens.

4. In all the states in question, extrajudicial executions are also committed by non-state actors, some of which have political front organisations that participate in running the government in their respective countries. In countries like Bangladesh, Indonesia, and Pakistan, fundamentalist religious organisations also engage in an alarming number of extrajudicial executions. In the Philippines non-state actors like the Abu Sayyaff group targets political as well as human rights defenders. Such executions do not have the possibility of proper documentation; documenting such cases, or even speaking about them, places civil society members at high risk. In Pakistan and Indonesia, some areas are totally controlled by non-state actors that have formed parallel governments. Here justice is that which is dictated by the power of the non-state ruler.

5. Extrajudicial executions manifest rooted problems within the law enforcement and criminal justice machineries of these states. Statutory impunity provided to state agencies to undertake extrajudicial executions, under the guise of national security, has resulted in an alarming hike in extrajudicial executions in all the states. Such legislations, generically termed as security legislations, or emergency provisions, or terrorist prevention laws, are enacted and promulgated often without national and parliamentary debate.

6. Extrajudicial executions are on the increase post September 2001. The declaration of the 'war on terror' has translated into arbitrary arrests, prolonged and secret detentions, excessive use of torture, all of it leading often into extrajudicial executions. States in the region have adopted without challenge, extrajudicial executions, as means with which anti-state activities are dealt with impunity.

7. These laws transform a state agency into a hydra-headed entity that engages in accusation, investigation, prosecution, adjudication, and execution of sentences. When security legislations empower law enforcement officers to shoot to kill civilians with impunity even the barrier of individual hesitation is removed. It is only natural that when statutory impunity with unbridled powers are provided to state agents as low ranking as police constables or soldiers in the army deployed internally to "deal with" threats against the state for which the officer is licensed to kill, the number of extrajudicial executions becomes very high. The culture of a lack of accountability, a lack of respect for human rights, and impunity has further fuelled the atmosphere of corruption and demoralisation among security agencies in Asia.

8. One of the first casualties of enforcing a regime of impunity by way of a statute is the principle of fair trial. All security legislations that provide statutory impunity to law enforcement agencies to engage in extrajudicial executions oust the jurisdiction of the civilian courts. In essence, extrajudicial execution flourishes in environments where law enforcement agencies are already demoralised due to the prevailing circumstances of impunity and non-accountability. All the states in question have such conditions prevailing within their territories.

9. Where the state fails to maintain the rule of law and make its agencies accountable through a fair trial procedure, it lacks the morality and voice to speak against armed, militant, secessionist, and religious fundamentalist groups that also engage in extrajudicial execution. The result in Asia is a security paralysis, deep demoralisation, and instability.

10. Each of the countries above has witnessed thousands of cases of extrajudicial execution in the past decade. Commissions of inquiry, constituted to investigate extrajudicial executions after domestic and international political pressure, which were successful in completing their mandate in each of these states, have found no further relevance beyond the submission of an inquiry report, since governments have not adequately acted upon these reports.

11. Ending extrajudicial execution in Asia requires strong domestic institutions that are capable of discharging their mandate of upholding the rule of law. The judiciary in Asia is unfortunately one of the weakest institutions of the state. In countries where the judiciary has remained strong since the beginning of the post-colonial era, judicial activism and intervention have largely remained within the law books and journals, as against the possibility of its true realisation for ordinary people in their daily lives.

12. Extrajudicial execution in Asia can be only addressed if Asian states have the resolve to establish regimes based on the rule of law, replacing regimes based on the rule by fear that exist today. This will require the Asian states to have the moral capacity to take a political decision that, irrespective of all denominators such as religion, region, race, and even political affinities, each life within their jurisdictions will be protected and preserved at all costs. This calls for a paradigm shift in the existing debate on Asia into one that focuses on the failure and incapacity of national institutions expected to maintain the rule of law.

13. It requires the international community's commitment to discuss criminal institution reforms in Asia, to focus attention on the need to overhaul policing systems, end the culture of impunity, prohibit torture, reduce judicial delays, refine the prosecutorial apparatus, and ultimately end the culture of political corruption rampant in Asia. The fact that South Korea, Japan, and Hong Kong are examples where such change has been successfully achieved, shows that criminal justice institution reforms are not a utopia but a real possibility, provided there is adequate encouragement for national and international debate about this essential requirement.

14. The United Nations Human Rights Council, a vital global institution, can initiate such a discussion. This will require the United Nations and its manifold specialists to try and understand more deeply the hindrances that cause rule of law paralysis in Asia. Discussion forums like the Council and its experts must be more critical of Asian realities.

15. This implies that instead of merely asking Asian governments to 'investigate, prosecute and adjudicate' human rights abuses, the Council, as an international body primarily concerned with protecting and promoting human rights globally, should engage with Asian states with a view to establish rule of law guaranteeing institutions therein. This will involve encouraging thorough reforms of criminal justice institution and their policies to replace the façade these states have created with institutions that breathe life into human rights guarantees that the Asian states are bound to protect through domestic and international law obligations. This will substantially reduce, if not completely end, extrajudicial executions in Asia.

16. Anything short of this will not render results.

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Please recycle

# BANGLADESH: Judiciary undermines its own independence

1. The Asian Legal Resource Centre (ALRC) wishes to bring the status of the judiciary and legal profession of Bangladesh to the attention of the UN Human Rights Council.

2. Bangladesh has been Member of the Human Rights Council virtually since its formation. The country has been party to two international Covenants and eight Conventions. Being a party to the International Covenant on Civil and Political Rights (ICCPR), Bangladesh is obliged to ensure the independence of the judiciary. It is mandatory for Bangladesh to take administrative, legislative, and judicial measures to implement the rights enshrined in the ICCPR.

3. In Article 22, the country's Constitution enshrines that: "[T]he State shall ensure the separation of the judiciary from the executive organs of the State." The country's jurisprudence also directs the government to ensure the independence of the judiciary. In a landmark judgment related to the Masdar Hossain case, the Supreme Court of Bangladesh emphasised the 'independence' and 'impartiality' of the judiciary. The Court gave 12 specific directives to the government about how the independence of the judiciary shall be ensured. One of the directives of the judgment states the following:

"It is directed that under Article 133 [of the Constitution], law or rules or executive orders having the force of Rules relating to posting, promotion, grant of leave, discipline (except suspension and removal), allowances, pension (as a matter of right, not favour) and other terms and conditions of service, consistent with Article 116 and 116A, as interpreted by us, be enacted or framed or made separately for the judicial service and magistrates exercising judicial functions keeping in view of the constitutional status of the said service."

4. The government still controls the recruitment, posting, and promotion of judicial officers. Instead of establishing a separate secretariat for the judiciary, as per the Court's judgment, the Ministry of Law, Justice and Parliamentary Affairs continues to control the judiciary. Political loyalty to the ruling State is deemed the key qualification for promotion and lucrative postings of judicial officers. Elevation to the higher judiciary, from the subordinate judiciary and the pool of legal practitioners, takes place in a way that fulfils the political purposes of the government. Relations with the President, the ruling party leaders, the ministers, and the parliamentarians play a decisive role in the recruitment, posting, and promotion of judges.

5. The Supreme Court, which directed the government to ensure independence of the judiciary, now acts as a tool for the government, harassing critics of the State. The country's law-enforcement agencies – especially the Rapid Action Battalion (RAB) and the police – have been busy abducting and disappearing citizens. But, the Supreme Court has not been able to provide any legal redress to the families of victims of enforced disappearance, i.e. those that could afford the high expenditure of litigation with or without help from human rights organisations. The entire institution of the judiciary has been complicit in the ongoing gross abuse of human rights.

6. Take the example of Mr. Imam Hossain Badal, detained by RAB-2, so ransom could be collected from his family. Human rights organisation Odhikar's Director A.S.M. Nasiruddin Elan and Badal's father Mr. Shahjahan filed a habeas corpus writ petition with a High Court Division Bench. The High Court ruled against the government including the Secretary to the Home Ministry, the Inspector General of Police, and the Director General of the RAB, asking them to respond to the Rule within four weeks.

7. The Home Ministry invited the victim's father to the ministry. In the name of an inquiry, the bureaucrats threatened Mr. Shahjahan with further consequence if he were to continue to pursue his son's disappearance case. Later, the Attorney General submitted RAB's statement – denying the paramilitary's involvement in disappearing Badal – before the Court. The proceedings have since stalled. The High Court has performed its 'judicial duty' by accepting the RAB's version of events via the Attorney General, who has acted as a postman for the law-enforcement agencies in addition to his usual role of slave to the ruling State.

8. The Magistracy and Sessions Courts have been endorsing torture by granting 'police remand' en mass. On one hand, the Bangladesh Police has a reputation for fabricating charges against innocent poor people and pro-opposition

supporters; they fabricate cases for extortion and to serve political masters. On the other hand, criminal investigation is synonymous with remand and torture in Bangladesh. The poor people falsely implicated in criminal cases on the basis of fabrications are unable to afford to challenge the decisions of the Magistrate's Courts beyond the Sessions Court, which itself often denies remedies to victims regarding unjustified police remand. The rights to liberty and personal freedom of the poor victims of fabricated charges are systematically denied in Bangladesh throughout the criminal justice institutional process.

9. Government persecution is implemented via judicial process in Bangladesh. The Cyber Crimes Tribunal began prosecuting human rights defenders Adilur Rahman Khan and A.S.M. Nasiruddin Elan, Secretary and Director of Odhikar respectively, for publishing a fact-finding report on extrajudicial killing of demonstrators of a pro-Islamic organisation on May 5-6, 2013. Without a credible investigation report and without supplying a copy of the police report, the Cyber Crimes Tribunal framed charges against these two prominent human rights defenders. The trial is pending following an order of the High Court. The ALRC has been informed that the Attorney General's Office has filed a petition for revoking the High Court's stay order in the case against the human rights defenders.

10. Another recent example related to Daily Amar Desh, a vernacular pro-opposition national newspaper. On 11 April 2013, the government closed down the printing press of the newspaper. The police arrested its Editor Mahumudr Rahman from his office. The police prevented the publication of the newspaper from an alternative printing press, although the law permits such publication with a notification to the administrative authorities of the government. The Amar Desh Publications Limited filed a writ petition no. 5460 of 2013 on 27 May 2013 with the Division Bench comprising Justice Mirza Hossain Haider and Mohammad Khurshid Alam Sarker. The writ came up in the cause list of the Division Bench; however, the Judges did not hear the writ for more than two months.

11. The petitioner's lawyers then shifted the writ to a Vacation Bench comprising Justice M. Enaytur Rahim and A.B.M. Altaf Hossain. The Vacation Bench heard the case on 27 August 2013. It issued Rule against the government. However, the Court did not pass any 'ad-interim order' about publishing of the newspaper. Later, the petitioner, on 22 September 2013, moved the case to another Bench comprising Justice Nayeema Haider and Justice Jafar Ahmed. The petitioner sought 'ad-interim order' for publishing the newspaper. On 2 October, the Court heard the case and said that the same matter should be on top of the cause list on the following day for hearing, and that the Court would dispose the matter. On the following day, 3 October, the case appeared at the bottom of the cause list; the Court did not hear it. Later, the Chief Justice dissolved the particular Bench.

12. The petitioner, then, brought the case to a Bench comprising Justice Salma Masud Chowdhury and Justice Mohamamd Habibul Gani. On 26 January 2014, the petitioner's lawyer mentioned the matter before the Bench seeking a hearing date. The Court set 27 January as a date for fixing a hearing for the case. Subsequently, 13 March 2014 was fixed as the date of hearing. In fact, the Court did not hear the matter and has not heard it since. The write petition number 5460 comes to the cause list every Thursday at the bottom of the list. The hearing does not take place. On 22 May 2014, the case was 180th in the cause list. The Editor of Amar Desh, Mahmudur Rahman, remains in prison, in dozens of fabricated cases, without trial since 11 April 2013. The newspaper is shut down for the same period without any lawful reason. Thus, by denying a proper hearing to the case, the judiciary has endorsed government repression for those that criticise the State.

13. The Bangladesh International Crimes Tribunal (ICT), established for trying the crimes against humanity committed in 1971, implicated a number of journalists and members of the civil society for exposing inconsistencies in its adjudications. In 2013, the ICT-1 issued 'contempt of court' Rule against Mahmudur Rahman Manna, the anchor of a talk show, and two discussants, Dr. Zafarullah Chowdhury and Mahfuz Ullah, for expressing critical comments. They spoke about the ICT-1 barring the defence witnesses of one of the war crimes accused from giving deposition. One of the discussants stated that, out of four defence witnesses, two were sitting judges of the judiciary. The Chief Justice did not give permission to these judges to depose when the judges sought formal permission from relevant authority. They remarked that such bar on defence witness might hamper fair trial.

14. Channel24, a private TV channel of Bangladesh, broadcast the programme in September 2013. The prosecutors of the Tribunal brought the charge of contempt. Subsequently, the ICT-1 summoned the discussants and the officials of the TV channel to appear before it. After a number of hearings, on 30 April 2014, ICT-1 announced that it would pronounce its final order about the 'contempt rule' on 12 June 2014.

15. Instead of upholding the normative principles of justice, the judiciary is getting intolerant of its critics, who point to judicial misconduct of judges and attorneys in Bangladesh. The higher judiciary uses 'contempt of court' as a weapon to hide its own non-juridical actions.

16. Lawyers in Bangladesh are polarised along political lines. Instead of helping the judiciary uphold the rule of law and enhance professional integrity, lawyers have been busy defending respective political party interests. The pro-ruling party lawyers have started a 'crusade' against the targets of the State, regardless of the legality or justification for such a position. The pro-opposition lawyers only gather together when their high profile leaders' cases come up for hearing. They merely show their faces for widening opportunity for personal gains in case those they support return to office in the near future. The fate of the ordinary poor litigants, who fall prey to the police, paramilitary forces like the Rapid Action Battalion, and ruling party cadres, remains bleak.

17. The ALRC reiterates that Bangladesh's judiciary lacks judicial mindset, commitment, and efficiency. The judicial institution does not have the moral, intellectual, and infrastructural ability to administer justice. The criminal justice apparatus survives as a facade to cover the criminality of the rulers. The nexus between corruption and politics has engulfed the entire State apparatus. The culture of impunity sustains, as a priority, above any obligation to justice and dignity. The legislature, the executive, and the judiciary, in fact, join hands to deny fundamental human rights and undermine the rule of law.

18. The ALRC urges the Human Rights Council and the international community to concentrate effort on failed criminal justice institutions. Without strengthening the institutions and making them effective for addressing the plights of litigants and the people at large, the existence of human rights can only be possible in our imagination. The UN human rights mechanisms require to shift strategy and focus to help realize the rights – based on the notion of justice – of the people.

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Please recycle

# INDIA: Reinforcing subordination of women in law and practice

1. To formally recognize the existence of discrimination against women in India, both in law and in practice, the country has acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993, undertaking obligation to eliminate "any distinction, exclusion or restriction" made on the basis of sex which impairs or nullifies "the recognition, enjoyment or exercise" women's "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This duty, however, is still waiting due recognition and implementation by the state.

2. In India, discrimination against women in law and practice is multi-layered and complex, owing to country's social, political, economic, and cultural fibers. Discrimination against women in India arises from multiple, intertwined, and pervasive sources, deeply influenced by the negative elements of caste, gender, marital status, customs and traditions, sexual orientation, economic empowerment, level of education, decision making power, poverty, prejudiced attitudes, and negative stereotyping in private and public spaces among others. Indian laws, as well as law makers, have yet to seriously recognize these aspects in the criminal justice system to ensure equality and non-discrimination regarding women.

3. Despite adopting constitutional guarantee of non-discrimination against women and affirmative action-like policy of reservations in certain sectors, discrimination against women in India remains both direct and indirect. Women are directly discriminated against for certain employment on the pretext of their supposed inferiority and negative stereotyping, especially regarding promotion to managerial posts. Due to these stereotypes, women are also not considered for employment in security sectors like the armed forces. Laws dealing with marriage and inheritance are discriminatory as codifications of personal and customary laws for many communities have yet to be initiated. Indirect discrimination causes females to be the first ones to be discarded from list of beneficiary of public schemes for obvious reasons like lack of capital, land, adequate training, education, and other assets.

4. Social conditioning encourages discrimination against women that begins at home. This is due to the fundamental basis of the social and cultural order of Indian family, an institution that women are born into. Families are based on male hierarchy, a fundamental contradiction to the notion of equality and non-discrimination. Indian families protect male dominance to enforce power and control over autonomy of the female members. In this way, women's subordination is reinforced by the tentacles of patriarchy manifested in discrimination at multiple levels through out women's life cycle. This omnipresent cycle of discrimination against women is often described as discrimination "from the womb to the tomb". Such social conditioning to discriminate against women is reflected in the law as well. For example, marriageable age determined by law still discriminates against women; it is fixed by the state as 18 years while that of a man is 21 years. Early marriage compared to men acts as a barrier for women in education, livelihood, and employment compelling them to be economically dependent on their male counterparts, who are favoured by the law to continue focusing on professional and personal development.

5. One of the prime manifestations of discrimination is violence against women in family, community, and the labour market, that indoctrinates subordination to women, compromising self-esteem and leading to a life without dignity. Discriminatory cultural practices, such as dowry, honour killings, witch hunting, etc. are widely prevalent in India. Women's subordinated status in the society, reinforces the promotion of male child preference. Consequently, female infanticide and female feticide, with the help of modern scientific medical technologies, has degraded the population sex ratio in the country while legal texts prohibiting such practices remain merely symbolic. Traditional practices in the name of religion can be equally blamed for negative cultural practices against women.

6. Security of person and property for women, however, supersedes all forms of violence. Gender based violence, rampant all over India, circumscribes women's access to livelihood opportunities and personal development while restricting their mobility. Despite several amendments in criminal laws favouring women, law enforcement remains inaccessible to women due to the high level of insensitivity and lack of professionalism in country's criminal justice mechanism. It is an established fact that women prefer silence over approaching law enforcement institution, such as the police, especially if the violence is sexual in nature. Women are also discouraged from seeking justice for sexual violence as they are perceived as symbols of "honour" for the family and community.

7. Women face discrimination in armed conflict situation as well. In India, armed conflict is ongoing in about 21 states and women there are affected disproportionately due to violence perpetrated by both state and non-state actors. Armed conflicts radicalize, utilize and encourage patriarchal dicta unilaterally imposed on women. In addition, sexualized violence committed by the armed actors is often used as a "weapon of war" that leaves women stigmatized for the rest of their life. In India, special legislative measures like Armed Forces (Special Powers) Act, 1958 and its equivalents permitting arbitrary detention are applicable in armed conflict areas of north east India, Chhattisgarh, Jammu, and Kashmir. Such legislations allows extrajudicial executions and involuntary disappearances with impunity and leaves women as widows and forced to live a life full of uncertainties, as documented by Asian Human Rights Commission, the sister organisation of the Asian Legal Resource Centre. The culture of impunity for sexual violence is endemic and is also a regular feature witnessed in armed conflict areas of India.

8. Much of the consistent and deep rooted pattern of discrimination against women in India can be attributed to the "sameness" (women are considered equal to men in terms of rights and duties) and "protectionist" (women are excluded for their own security from rights and duties) approach of addressing inequality by the policy makers in framing laws and consequently in practice. This approach, to date, has posed a significant barrier to women's equal participation in the decision making bodies, like the parliament of India: the most important law making institution in the country having profound potential for eliminating discrimination against women. However, women's entry to this institution remains poor in spite of a few exceptional leaders. To reverse this discrimination, an affirmative action-like reservation of 33 percent of the seats for women in the entire legislatures was initiated. However, such a pro-women proposal passed in upper house of the parliament lacks political will and is still catching dust in the lower house of the parliament with a *sine qua non* status. In last general election (2009), representation of women in leadership and decision making positions for the country was confined to only 11.4 percent of parliamentarians, the lowest in South Asia, despite the fact that almost 50 percent of the electors in the country are female. The status didn't change much in the recently concluded general election of 2014. It was observed that major political parties discriminated against women in nominating them as candidates. Major political parties like the Indian National Congress nominated 56 women and that of Bharatiya Janata Party nominated only 35 candidates. A total of 636 women out of 8,163 candidates contested and 191 of them contested independently. The statistics of representation remains marginalized with only 61 women parliamentarians out of a total of 543 seats in the lower house of the parliament. In local governance, though the 73rd and 74th amendment to the Constitution of India confirmed 33 percent of seats are reserved for women, areas marked under sixth schedule and other special status areas under the constitution are left out of this scheme. Systematic exclusion from decision making body through their marginalized demography in parliament over a period of time has adverse effects on her entitlements and rights spanning a spectrum of political, public, economic, and social subjects. A change in political landscape affirming equal participation of women is required to further pursue non-discrimination.

9. The absence of equality in the political field perpetuates harmful discrimination. Constitutional and legal measures or policies adopted in parliament even being labeled as good practices to protect, respect, and promote women's rights on par with men, suffers from inherent inadequacies and lacks any proper implementation apparatus. In addition, insensitive and inefficient institutions further prohibit women from accessing justice in case of a violation or to enforce her rights.

10. Inadequate resource allocations for implementation of laws and policies promoting women's equality remain a challenge. The Prohibition of Domestic Violence Act 2005 is an example. Gender budgeting, though adopted in 1990s for mainstreaming gender in state apparatus, is yet to be proved as a strategy rather than a mere catchphrase.

11. Nearly half of India's population is women. In order to achieve equitable social, political, and economic justice, elimination of discrimination against women in law and in practice should be treated as a prime duty of the state. To achieve this, the Convention on Elimination of All form of Discrimination Against Women (CEDAW) advocates for adoption of a "substantive model" (equality of women in result, not in process) of equality as a strategy that recognizes women's unequal status in the society and stresses the importance of equality of opportunity and equality of results at par with men.

12. Being a state party to CEDAW, and given that the review of Government of India's report by CEDAW Committee is forthcoming, Indian policy makers must ensure its commitments and obligation to adopt both in law and in practice, the "substantive model of equality" as well as "procedural equality" in criminal justice system as a matter of priority that prescribes equality in results and in process.

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Please recycle

# INDIA: Omnipresent corruption affects all

1. There is not a single state run institution in India that has not succumbed to corrupt practices. Right from the four pillars of democracy – the executive, the judiciary, the legislature, and the media – all public institutions in India are riddled with corruption. Widespread corruption directly impacts the lives of a majority of Indians.

2. While corruption affects all, the worst affected are poor Indians, who comprise 312 million out of a 1.2 billion population. This is because the poor in India depend mostly on state run schemes like public food distribution and free medical care, examples of two programmes mired in corruption.

3. India is ranked amongst the most corrupt countries in the world, sharing this dais with some of the least developed economies. One in every five poor persons in the world lives in India; the role of corruption in this statistic is central. With corruption characterizing the functioning of all aspects of the state, the social consequences are devastating. Yet, India's national policy is to have no policy to combat corruption.

4. Budgetary allocations in India are skewed at the planning stage itself due to decades of non-transparent, uncompetitive, and totally corrupt public procurement policies and practices at the union and state level. And, even the limited funds that end up allocated for education, health, entitlement, and subsistence schemes – i.e. programmes that serve as a lifeline for the poorest of the poor – are diverted, embezzled, and looted at various stages of implementation.

5. National programmes formulated and implemented to address abject poverty like the Mahatma Gandhi National Rural Employment Programme and the National Rural Health Mission are examples of programmes that have failed to deliver their mandate due to widespread corruption in implementation. Both programmes, if meticulously implemented, have the potential to address abject poverty and usher a brighter future for millions of Indians. Corruption-led failures in their implementation have contributed to widespread malnutrition and starvation among Indian children, creating conditions worse than those in some sub Saharan African countries.

6. Institutions supposed to address corruption, such as the judiciary, the prosecution, and the specialized investigative apparatuses, are all corrupt. Corruption thrives in a non-transparent Indian judiciary to such an extent that a substantial number of former Supreme Court judges, including Chief Justices, have been openly accused of corruption, with damning documentary evidence available in the public domain. Yet, virtually none of these judges and their corrupt actions has been investigated. The morale of the judiciary is such that former Supreme Court judges have sold their offices for sexual gratification.

7. Even the claims used as qualifiers and excuses by those in seats of power, such as 'only 20 percent of judges of the higher judiciary in India are corrupt', i.e. that there only a few 'bad apples', implies that the Indian judiciary is corrupt. The judiciary is an institution to which absolutes apply; either the judiciary is corrupt or it is not corrupt. This argument follows from the fact that the fundamental human rights of an individual are absolute and are not qualified by the integrity of a judge or that of an institution represented by a judge.

8. The specialized agency constituted to investigate corruption in India, the Central Bureau of Investigation (CBI) established by the Delhi Special Police Establishment Act, 1946, is perceived to be corrupt. Every political party that has formed a government in India has used the CBI to settle its vendettas. Corruption in the CBI exceeds illegal gratification in cash and kind in return for pursuing or stalling investigations or proceedings. It consists of a variety of policies, decisions, action, and inaction that relate to the discharging of duties of the country's premier investigating agency.

9. Corruption is what decides whether, at the local level, a police officer should accept a complaint regarding a commission of a crime or not. Corruption dictates the contours of the investigation in its entirety, in that a crime investigation is a commodity that can be purchased by the rich and politically influential. Persons who commit crimes can either escape detection or avoid punishment by bribing the investigating officer.

10. Officers are corrupt irrespective of their rank. Corruption in the police begins with the induction of the officer; vacancies are filled at the whims of the ruling political party, with politicians at all levels including ministers and their

cronies demanding and accepting bribes for such appointments. Once inducted, the officer begins extorting his beat to pay-off what is, in essence, an investment.

11. Similar scenarios, with regional variations, mark all manners of government appointments in India, from schoolteachers to doctors, who then find novel ways for a return on investment. Students have to bribe their way into colleges. It infects administrative positions, from the junior most positions to the highest posts in government, with transfers and postings routinely bought and sold. The cumulative social impact of the decisions made by so many compromised officers on so many citizens is astounding.

12. Omnipresent corruption in India and the unwillingness of the Indian state to deal with it is demonstrated from the fact that around two thirds of Indian parliamentarians are known to be extremely corrupt individuals. The newly elected parliament does not show any change in the trend. Policies that these parliamentarians create and the legislations that they pass and stymie serve to preserve their privilege of being able to sit in Parliament while being deeply corrupt. Hence, maintaining the status quo, allowing the evil of corruption to remain widespread, is the Indian state's policy for dealing with corruption.

13. Widespread corruption and state policies being decided to foster corrupt means has allowed private entities, like business houses and international corporations, to literally buy the Indian parliament and India's bureaucracy, in order to advance their interests. The immediate casualty of this is the rights and entitlements of the Indian people, especially the poor and the marginalized. Corruption has facilitated widespread and horrendous exploitation of national resources and has resulted in massive displacement of citizens. It is common to find people so displaced, for the implementation of a project that benefits a private entity, being subsequently displaced three or four times more for other such projects. This has created millions in India who remain perpetually displaced and uncompensated, across generations.

14. The practice of corruption and the concept of democracy are mutually opposing. Corruption has weakened India's democracy and harmed the security of its people. Indians have witnessed their policy makers sell the country's sovereignty and security for private benefit. It is a shame that none of these criminals have been adequately punished. The norm is such that the higher the degree of ill-gotten wealth a person makes through corrupt means, the lower the possibility of their being punished for such crimes. Analyzed from this position, neither does the practice of the rule of law exist in India, and nor does the country have the possibility to deal with corruption appropriately. India has ratified the International Convention against Corruption as early as in 2011. However, it is not expected that India will do anything to combat corruption anytime in the near future.

15. The decision to end corruption is a political one, which India will have to make. While the ratification of an international convention that specifically addresses corruption is a positive step, India, unfortunately, lacks all the other tools necessary to combat corruption at a domestic level. That an important country like India is literally being ruled by corruption and by corrupt means has had an adverse impact on the region and the globe. India's policy commitments in the development and nurturing of universal human rights norms are deeply and adversely affected by the Indian state's policy of maintaining an environment for corrupt governments to thrive at the domestic level. What India cannot guarantee and fulfil for its own people, the country cannot contribute in promoting elsewhere in the world.

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**Human Rights Council**
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# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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*1404167*

Please recycle

# INDIA: Extrajudicial Executions

1. High prevalence of extrajudicial executions in a jurisdiction indicates deep problems within its rule of law framework. The higher the number and frequency of such murders, state sponsored or otherwise, the more rooted the problems in the criminal justice process. To this direct correlation, India is no exception.

2. There are, however, no credible statistics available regarding the number and frequency of such killings in India. Neither does the state, which includes the human rights commission, nor does the civil society have an accurate estimate concerning the number of persons killed extra-judicially in India. What is available is a rough regional or state-wise estimate where extrajudicial executions are more frequent.

3. This lack of information is partly due to the fundamental failure of the Indian state to maintain a functioning policing architecture, especially relating to complaints and investigative procedures. Additionally, many cases of extrajudicial executions are undertaken by state agencies themselves, i.e. police and military units. Often such executions are tagged and referred to as 'killed in armed encounter'. Information provided by the state concerning such 'encounters' are invariably biased and tampered with by state agencies. So, even when skills and resources are available, civil society organisations find it difficult to separate fact from fiction in such cases.

4. The Asian Legal Resource Centre (ALRC) disagrees with the UN Special Rapporteur's conclusion about the situation in India, i.e. the conclusion drawn by the Rapporteur following his visit to India in March 2012. The Rapporteur failed to observe that the central deficit in the criminal justice framework in India, one that promotes extrajudicial executions, is the absence of the rule of law.

5. The claim that the country has a constitution often termed a 'living document', but lacks the political will to ensure that the 'life' guaranteed under the constitution is upheld in all circumstances, has a ring of truth to it. What is required is national commitment to guarantee the rule of law and fair trial, under all circumstances.

6. This will require complete overhaul of India's policing apparatus, so every uniformed officer can be accountable for what the officer does and fails to do at all levels. This will require equipping the police to engage in policing as expected in a democratic setup. It calls for immediate and substantial changes in the policing policy, from one where police is used as a tool for social control to another where police is but another organ of the state equipped and trained to deliver services to all citizens.

7. Such a change would make complaining about an extrajudicial execution the duty of the state through the police and not the responsibility of the victim's family. A policy change in such a direction means that each custodial death and 'encounter' will be investigated by the state, promptly and effectively. Such a change will require the provision of adequate protection to witnesses. It will also mandate prompt adjudication of cases, cutting the delays that that make cases run on for decades. It will also demand a complete overhaul of existing facilities for undertaking scientific crime investigations, which, at the moment, are inadequate in every Indian state.

8. All of the above, however, follow from a political decision. It is a decision that has the potential to change the corrupt political and law-enforcement landscape of India. Such a paradigm shift will end the corrupt and criminal politicians in India.

9. A drastic and structured shift in state policy – to improve the functioning of the criminal justice apparatus in India and make it capable of delivering justice to all – will substantially reduce internal armed conflict in India. Regions, such as the states of Jammu and Kashmir, Manipur, Assam, and Chhattisgarh, where intense armed conflict exists are regions where corrupt and parochial administrative polices are followed to broker fractional political interests. The safety, dignity, and equal rights of citizens are compromised in such an environment.

10. Extrajudicial execution is not an aberration in the day-to-day functioning of India's security agencies. It is the natural by-product of maintaining the status quo in which these agencies operate. Ineptitude, corruption, impunity, and torture are norms and preparedness, honesty, and accountability the exceptions.

11. What prevails in India is a rule by fear, not the rule of law. The result is a paralysis of fair trial guarantees. This has to change. Expectations, based on recommendations made by the Rapporteur, to investigate, prosecute, and adjudicate extrajudicial executions, without suggesting a paradigm shift in the policy of the Indian State, will bear no fruit. Such recommendations, irrespective of the frequency with which they are made, will never render results. This is because the political policy followed by the Indian State is to discourage investigations of human rights abuses committed by state agencies, to maintain a culture of fear.

12. If extrajudicial executions in India are to end, a change in policy is critical. Life has to be breathed into institutions to enable them to protect the life and property of every citizen. Until such a change happens extrajudicial executions in India will recur.

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# NEPAL: Council should exert strong pressure to bring a law that criminalises torture*

1. Torture is a grave violation of human rights. The prohibition of torture is a fundamental element of international law, enshrined in major international human rights instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, Universal Declaration of Human Rights (UDHR), 1948 and International Covenant on Civil and Political Rights (ICCPR), 1966.

2. Nepal has acceded to the CAT on May 14, 1991. The Interim Constitution of Nepal, 2063 (2007) penalized torture. In 1996, the Government of Nepal promulgated the Compensation Relating to Torture Act, 2053 (1996), also known as the Torture Compensation Act (TCA), which did not adequately grasp the gravity of issues related to torture and match the standards of the CAT. The TCA prohibits torture and contains provisions for compensation to victims of torture and departmental action against the employees of the government who inflict torture on others. Besides the TCA, the National Human Rights Commission Act, 2068 (2012), Evidence Act, 2031 (1974), Draft Criminal Code and Country Code, 1963 (*MulukiAin*, 2020) also contain important provisions against torture.

3. Despite all these provisions, torture is still widely prevalent in Nepal and there is no effective redress to victims of torture in the country. Moreover, the government has failed to criminalize torture despite the Supreme Court's order in 2007 to do so. As rightly noted by the UN's Committee against Torture, the government has not been adequately successful in terms of fulfilling many of its obligations under the CAT.

4. Nepal has rejected the recommendation of the UPR to become a State party to the Optional Protocol to the Convention Against Torture (OPCAT). The Committee against Torture, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Universal Periodic Review (UPR) process and OHCHR's *Nepal Conflict Report 2012* has provided many appropriate recommendations to the Government on torture-related issues but it has yet to implement those recommendations.

5. In terms of access to justice of the victims of torture in Nepal, notably, the TCA does not adhere to the principles pertaining to the rehabilitation of victims of torture as set forth in the CAT. While Nepal's judiciary has played a crucial role in the protection of human rights in the country, there have been some instances in which the country's courts have decided to award very low amounts of compensation to victims of torture, refrained from ordering departmental action against perpetrators and imposed fines on victims of torture for threats-induced withdrawal of their cases.

6. The failure to criminalise torture, the narrow definition of torture, the statute of limitations of 35 days for lodging complaints of torture, the lack of a victim-friendly justice procedure and a mechanism for the investigation of cases of alleged torture, the insufficient remedy to victims of torture, the lack of effective protection of victims and witnesses, the social stigma attached to victims of torture, the weaknesses in terms of medico-legal documentation, the lack of national prevention mechanisms, the culture of impunity, the lack of legal support and rehabilitation services for victims of torture, exclusion of victims of torture from the definition of the victims of conflict and obstruction in the delivery of justice to the conflict-era victims of torture due to the delay in the formation of the transitional justice mechanism (TJM) are the major hurdles to access to justice of the victims of torture in Nepal.

7. Due to the delay in establishing the Transitional Justice Mechanism (TJM) promised in the Comprehensive Peace Agreement (CPA), 2063 (2006) and Interim Constitution of Nepal, 2063 (2007), victims of torture from the era of internal conflict (1996-2006) in the country have not obtained justice even more than 8 years after the signing of the CPA.

8. The Interim Constitution of Nepal, 2063 (2007) explicitly prohibits torture. The Compensation Relating to Torture Act 2053 (1996) also prohibits torture in detention and includes provisions for compensation to the victims of torture and departmental action against the perpetrators. Although the state has made some attempts to prevent torture and provide compensation to the victims of torture in Nepal, its initiatives have not been satisfactory in terms of meeting its obligations regarding torture. In practice, torture has continued in detention centers and there is no investigation mechanism for alleged cases of torture in the country.

9. Nepal's prevalent system lacks adequate remedy for torture; most of the alleged incidents of torture in the country have not been dealt with satisfactorily and perpetrators of torture have remained unpunished. Moreover, there is also a severe deficiency in terms of rehabilitative services targeting the victims of torture in the country. Consequently, access to justice of victims of torture remains, to a large extent, an unaddressed issue in Nepal.

10. Likewise, due to the state's unclear, skewed definition of the victims of conflict, the conflict-era victims of torture have not officially been considered victims of conflict; as a result, victims of torture have not received any support provided by the government to the victims of conflict. Instead of reparation, victims of torture have been receiving threats; they are being re-victimized. The government has not satisfactorily implemented the recommendations of the relevant treaty bodies of the United Nations (UN) and Universal Periodic Review (UPR) on the issue of torture. As the government has failed to address salient issues associated with torture in line with international standards, victims of torture are forced to accept injustice in the country.

11. For the prevention of torture and promotion of access to justice of victims of torture in Nepal, the Council not only should exert pressure to the Nepali government but also engage to bring a law that criminalizes torture. In light of the above, the Asian Legal Resource Centre requests for the Human Rights Council to call on the government of Nepal to:

a. Immediately enact a law criminalising an act of torture in line with the definition stipulated in the Article 1 of the CAT;

b. Establish an independent and competent mechanism to investigate all credible allegations of torture and other cruel, inhuman or degrading treatment or punishment;

c. Ensure that victims of torture are able to lodge complaints and initiate legal actions against perpetrators without any statute of limitations;

d. Introduce interim relief to the victims of torture during trial and ensure the provision of adequate compensation and rehabilitation package to the victims;

e. Ratify the OPCAT and establish a suitable national preventive mechanism;

f. Ratify the Rome Statute of the International Criminal Court (ICC);

g. Enact a law for the protection of victims and witnesses;

h. Put sexual violence and rape fall under the definition of torture and provide immediate support to the victims if necessary;

i. Implement the recommendations made by the UPR, Special Rapporteur of the United Nations Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Committee against Torture and *Nepal Conflict Report2012* (prepared by the United Nations Office of the High Commissioner for Human Rights);

j. Conduct capacity-building activities for the country's law enforcement agencies (such as security forces), legal professionals and the judiciary on issues associated with the prevention of torture and protection of, and legal redress for, victims of torture, and;

k. Train health professionals on the documentation of torture.

12. The ALRC also calls on the National Human Rights Commission to conduct its activities in line with the Interim Constitution of Nepal, 2063 (2007), National Human Rights Commission Act, 2068 (2012) and Paris Principles for the prevention of torture and delivery of justice to the victims of torture.

13. The ALRC further requests the international community including the UN and developing agencies to continue to provide ample resources and technical assistance to the government of Nepal with full knowledge of practical barriers that prevent the government of Nepal from fulfilling its obligations with regard to the relevant international human rights instruments and mechanisms, including the CAT.

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* Forum for Protection of People's Rights, Nepal (PPR Nepal) NGO(s) without consultative status, also share the views expressed in this statement.

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# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

# PAKISTAN: The international community must pursue the government of Pakistan to ensure the safety and security of journalists

1. As a member of the United Nations, Pakistan has obligations to ensure the equal enjoyment by all people within its territory of the personal and advocacy rights protected by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Discharge of these obligations entails the right to Freedom of Expression and safety and security of the journalists, which the Human Rights Committee has determined applies to both criminal and civil proceedings.

2. The environment for working journalists is steadily deteriorating and has reached a point where Pakistan has become one of the most dangerous countries in the world for journalists. Journalists face menacing threats from militant groups including the Taliban and Al-Qaida and from the spy agencies of country's most powerful security establishment, particularly from the Inter Services Intelligence (ISI). Journalists walk a tight rope while performing their professional duties. In an actual sense they live on a daily basis with swords dangling over their heads.

3. The fact that Pakistan is among the most dangerous countries in the world for journalists is borne out by the statistics of a total of 87 deaths since the year 2000. A total of 16 journalists were killed during the year 2011, nine journalists died in 2012 and 13 journalists in 2013 while performing their official duties which ranked Pakistan as the third most dangerous country in the world for journalists. The tribal areas, Khyber Pakhtoon and Balochistan provinces remained the most dangerous areas for journalists from the state intelligence agencies and militant groups.

4. Besides this, more than 100 journalists were injured while performing their duties. The authorities make the tall claim that they are providing treatment for the injured journalists and taking care of the welfare of their family members. However the government and the media houses have failed to provide protection to the working journalists, particularly in the war zone areas. The media houses are equally responsible for not taking steps to provide protection to the journalists rather than taking them for granted. At times it looks as if media houses are happy when a journalist is killed as the names of their organisations are quoted at every level. The owners are more concerned about making profit than providing insurance and health benefits to their staff. They have failed to develop any security plan for the safety of the journalists and the future of their families in the event of threats to their lives.

5. During 2014, a journalist and three staff of a television channel were killed in an ambush. From January 2013 to-date, 17 journalists were killed by state intelligence agencies or militant groups such as the Taliban and sectarian groups. Three journalists including two prominent anchorpersons of two television channels were attacked and injured. One, Mr. Raza Rumi of Express channel, was attacked by Taliban group and other, Hamid Mir, was allegedly attacked by the ISI.

6. The military establishment has decided to close down or suspend the licenses of three channels of GEO, a television outlet with the largest viewership in the country. The suspension came about on the complaint of Ministry of Defence by the Pakistan Electronic Regulatory Authority (PEMRA). The Ministry of Defence complained to PEMRA on behalf of the ISI after the station accused General Zaheerul Islam as a conspirator in the attempted assassination of GEO's anchorperson, Hamid Mir. and his family members.

7. Closure of these channels will result in over 2000 journalists and staff losing their jobs. The actions of the Ministry of Defence effectively serve to punish the staff for working with a media house.

8. In the wake of the journalists' subsequent complaints, the ISI has instigated and organised religious groups, forbidden militant organisations, and some right wing political parties to agitate on the streets on daily basis against the GEO group. This campaign has reached a dangerous point such that journalists from GEO group fear being attacked.

9. Amid the agitation, on April 19 a prominent journalist and anchorperson of GEO TV was critically wounded by six bullets. The assailant remains unknown. He and his family members accused the ISI and its chief general Zaheerul

Islam of organizing the attempted killing. TV host Imtiaz Alam has also been receiving threats. A few months ago TV anchor Jasmin Manzoor reportedly cried in front of the Prime Minister and begged for her life.

10. On May 2 GEO News cameraman Asif Kabir was going to the channel's office in Model Town A, Bahawalpur, Punjab, when three motorcyclists wearing helmets stopped him. The three men called him a traitor and an Indian agent and then assaulted him. They injured him badly and attempted to steal his camera. As of writing, no case has been filed by the local police.

11. There are examples of many journalists like Saleem Shahzad, who was disappeared from central Islamabad on May 29, 2011. His body, bearing visible signs of torture, was discovered on May 31. The Supreme Court, at the request of the government, formed a commission of inquiry into the killing. However, the commission's failure to get to the bottom of the Shahzad killing illustrates the ability of the ISI to remain beyond the reach of Pakistan's criminal justice system. The commission's failure to get to the bottom of the Shahzad killing illustrates the ability of the ISI to remain beyond the reach of Pakistan's criminal justice system. The government still has the responsibility to identify those responsible for Shahzad's death and hold them accountable, no matter where the evidence leads.

12. Hyatullah, MusaKhel and many from Balochistan were killed after their disappearance by the powerful intelligence agencies of the army. A prominent journalist, Umer Cheema, was also abducted by the intelligence agency, the ISI, severely tortured and sodomised by army officials. But, as is typical where the military are concerned, no perpetrator has ever been prosecuted nor has any enquiry been concluded.

13. In the murder of Hyatullah Khan, a judicial commission was formed which came out with the opinion that the secret agencies of the military were involved. However, the government has not made the report public and when the widow of Hyatullah Khan began to pursue the case she was also murdered and the ISI was given immunity.

14. Besides the state onslaught against the journalists as the punishment of freedom of expression the journalists are also the target of militants groups in the conflict areas. The journalists reporting on the two conflicts, namely Taliban Militancy and Baloch insurgency, are faced with double jeopardy. There is a common perception in the tribal belt that the military and the militants are on the same page and only innocent people are suffering. It becomes tricky to maintain a balance in reports as it is hard to know exactly who is on whose side.

15. Due to pressures from state intelligence agencies and militant groups, the Federally Administered Tribal Areas, Khyber Pakhtoon and Balochistan remain the most dangerous areas for journalists. In addition to prosecution by the government, journalists are also the target of militant groups in these conflict areas, especially those who report on Taliban Militancy and Baloch insurgency. There is a common perception in the tribal belt that the military and the militants are on the same page and only innocent people are suffering. It becomes tricky to maintain neutrality in reporting as it is hard to know exactly who is on whose side.

16. Journalists working in the Federally Administered Tribal Areas and Khyber Pukhtunkhwa face higher risks. In many cases their families also suffer threats and harassment. Aslam Durrani of Peshawar, Mumtaz Malik of North Wazirstan and Ayub Khattak of Karak were killed in northwestern Pakistan because of their reporting during the year 2013. Others have been kidnapped and assaulted.

17. In Balochistan, insurgents, underground death squads, and sectarian groups like the Lashkar-e-Jhangvi have reportedly threatened journalists. Rights groups have been reporting the deaths of journalists at the hands of intelligence agencies for a significant length of time.

18. Many journalists have left the country because they find no protection from their own organizations and the government. In 2011 four journalists left the country in 2012 eight, in 2013 six and in 2014 three journalists left the country after receiving threats from state agencies and militant groups. These journalists, when they received shelter abroad have been hired by international media houses because of their investigative journalism.

19. Pakistani people often look to the media for help as the judiciary and law enforcement agencies have failed them.

20. Here, the judiciary cannot be expected to provide legal remedies as the courts are beholden to the power of the security establishment and militant organisations. The judiciary itself is directing the police to file cases of blasphemy and treason against the GEO group.

21. Pakistani people often look to the media for help as the judiciary and law enforcement agencies have failed them.

22. Here, the judiciary cannot be expected to provide legal remedies as the courts are beholden to the power of the security establishment and militant organisations. The judiciary itself is directing the police to file cases of blasphemy and treason against the GEO group.

23. Amnesty International said in its statement on April 30 that journalists in Pakistan live under the constant threat of death, harassment and other violence from all sides. These threats come from parties such as the intelligence services, political parties, and armed groups like the Taliban.

24. The ISI, Pakistan's spy agency, has been implicated in numerous abductions, torture and killings of journalists, and yet no serving ISI official has ever been held to account. This effectively allows the organisation to continue to operate beyond the reach of the law. The Reporter Without Borders has termed Pakistan "the world's deadliest country for media personnel".

25. The failure of the criminal justice system allows perpetrators to compromise freedom of speech with impunity. The Pakistani government has instituted judicial commissions of inquiry on two occasions into the killings of journalists, yet these commissions failed to identify the assassins. Murders of journalists have never been prosecuted or brought to book regardless of available evidence and witnesses. Civilian politicians cannot take action as they themselves are in fear of the military. The Taliban and other militant groups are shields for the military establishment and are used to suppress the freedom of expression.

Recommendations

26. In light of the above, the Asian Legal Resource Centre recommends the followings:

a. Pakistan must prioritise the safety and security of journalists. The authorities should categorically prosecute all those who threaten and attack journalists;

b. Pakistan must ensure protection of the journalistic community including their families;

c. Media houses must ensure the well-being and safety of their journalists and provide compensation for family members in case of death;

d. The UN Human Rights Council must pursue the Pakistani government to rein in the military and the intelligence agencies to ensure that they do not carry out extrajudicial killings of journalists;

e. Trade partners of Pakistan must make their relationships conditional on the safety and security of journalists, and;

f. Donor groups and the World Bank must not compromise on the freedom of expression and safety of journalists in Pakistan while providing the grants and the loans that Pakistan needs.

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# Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

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Please recycle

# Assessment of the Human Rights Situation of Roma, Ashkali and Egyptian (RAE) IDPs in Kosovo[1]

The main focus of this summary is the access to accommodation, property and reintegration of RAE IDPs in Kosovo. The information provided is mainly gathered trough field visits and some personal exchanges with RAE IDPs whose status did not change even after 15 years of displacement.

## 1) Background

Following the end of NATO bombing in 1999, up to 134,000 members of the RAE community had been violently expelled from their homes. In many cases the massive destruction of their homes and former settlements (mahallas) made them to leave their places of origin. 60% of the RAE families who had an opportunity to leave Kosovo were seeking asylum in the EU countries while others had been registered as IDPs.

UNHCR - in coordination of the municipal office for communities - has made several assessments on the possibility of return for RAE IDPs to their place of origin. Only a very small percentage (close to 14%) had returned to their place of origin while their security situation has been monitored. Due to political tensions and lack of social assistance, the majority of RAE IDP's did not find an opportunity to return to their former places of origin. They decided to stay in informal settlements and tried to reintegrate into the new environment.

## 2) Overall situation of RAE IDPs

There are still about 97,000 IDPs displaced from Kosovo with continued displacement related needs, according to a joint IDP needs assessment from 2011, carried out by the Serbian authorities and the UNHCR. Among this population in need, there are thousands of Roma IDPs who are the most vulnerable and have specific needs and protection concerns, particularly documentation, residency requirements, and access to social services. When it comes to the situation of IDPs in Kosovo, UNHCR is referring to its statistical data where 17,283 persons are considered as IDPs. Among them, 720 persons belong to the RAE community. After 15 years, there are still some IDP camps active in Leposavic, Zvecan, Gracanica, Strpe and Kamenica. A majority of the IDPs living in these camps are members of the RAE community. Even if there is a wish of returning to the place of origin, most of the RAE IDPs are not returning due to political and also administrative issues. Most of the houses - up to 78 % - are demolished or burned down while other houses are occupied by the majority population. Property issues are still unsolved. In most of the cases, former houses of RAE IDPs have been burnt down, demolished or are occupied by the majority population.
There is still some pressure on some minority communities (especially on Serbs and Roma) to sell their properties for little amount of money to the majority population. STP has documented several cases were members of the majority population have falsified papers and documents to obtain properties which legally belong to members of some minority communities.

Close to 60 % of RAE IDPs from Kosovo are asking for integration assistance at the actual places because they are not able to return to their former places of origin. One of the main reasons are property issues which are still unsolved. A lot of them did not own their land where they have constructed their former houses. They have constructed it on municipality ground. Some of the RAE IDPs unable to prove their former property rights and therefore are unable to return to their former houses or properties.

Kosovo authorities are prioritizing the return and settlement of IDPs from neighboring countries (the former Yugoslav Republic of Macedonia, Serbia, Bosnia, Montenegro). In most of the cases, those are organized groups who are accessed and returned by the UNHCR and assisted by the fund of the Ministry for Communities and Returns (MCR).

[1] Reference to Kosovo should be understood in full compliance with United Nations Security Council resolution 1244 and without prejudice to the status of Kosovo.

**3) Return assistance**

The Constitution of Kosovo guarantees the right to all refugees and displaced persons from Kosovo to return to their homes and to recover their property and personal possessions and stipulates that the competent institutions and organs in Kosovo shall take all measures necessary to facilitate the safe return of refugees and displaced persons to Kosovo. The Society for Threatened Peoples (STP) has been monitoring the situation of returning RAE IDPs during the last 18 months. The outcome shows that in 30% of the cases of returning RAE IDPs who are returning to Kosovo on an individual base full access to housing and social assistance has been denied.

STP is aware of some RAE IDPs who returned to Kosovo in 2011 and still not have received any assistance although they have been registered and assistance contracts have been signed. The concerned RAE IDP families are still figuring on the waiting list. Confronted with this situation, MCR refers that there are not enough funds allocated to support the reintegration process of former RAE IDPs.

In most cases, RAE are excluded from housing assistance without giving any specific reasons. STP is also aware of some cases in Gracanica, Laplje Selo, Dobrotin and Strpce where the Ministry for Communities and Returns had called on all IDP families to apply for social assistance. Unfortunately, several application coming from RAE IDPs asking for housing assistance where denied without giving any specific reasons.

**4) Conclusion**

According to our findings, we have to conclude that RAE IDPs are not enjoying the same rights as other minorities when it comes to return assistance. They are the most vulnerable group – also among the remaining IDPs in Kosovo - and are still facing discrimination and exclusion.

**5) Recommendations:**

**STP strongly urges the Human Rights Council to call upon the government of Kosovo:**

1. **To consider the local integration of RAE IDPs as a durable solution and assist in the reintegration process. This should include an effective solution for property disputes and social and economic integration.**

2. **To ensure equal opportunities when it comes to access to state services. Namely, the Ministry for Returns and Communities should more carefully monitor the access to housing and social assistance when it comes to RAE IDPs.**

3. **To ensure a regular reporting on social and economic reintegration process of returned RAE IDPs.**

4. **To involve RAE NGOs and RAE representatives in decision making processes when it comes to the implementation of the reintegration strategy of returned RAE IDPs and refugees.**

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**Human Rights Council**
**Twenty-sixth session**
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**Human rights situations that require the Council's attention**

# Written statement* submitted by the Presse Embleme Campagne, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04170
*1404170*

Please recycle

# Journalists need protection in Ukraine

The Press Emblem Campaign draws the attention of the Human Rights Council on the situation of journalists and media workers in Ukraine. Since the beginning of the civil unrests last November, hundreds of cases of different kind of violence against journalists and media workers have been reported; three journalists have lost their lives, the last one being killed on the same day of writing this contribution (24 May 2014).

Like in other countries where violent and armed confrontation prevails, in Ukraine too journalists and media workers are targeted physically and psychologically and have become victims of different forms of violence, torture and killing.

While in the period 2005 to 2010, the independence of the media in Ukraine increased and legislative measures allowed the establishment of a safe and enabling environment for journalists and media workers, since 2010 the situation has constantly deteriorated leading to an atmosphere of diffused self-censorship.

The political crisis erupted last November, which turned into an internal armed conflict, has had a dramatic impact on the working conditions of journalists.

According to different reliable sources, hundreds of local and international journalists and media workers were wounded during the mass protests that took place in Kiev and other localities; when attacked by protestors, the security forces did not protect them; sometimes the victims were deliberately targeted by governmental forces although they were readily recognizable as media workers.

An increasing number of broadcasting (TV and radio) stations and newspapers have also been targeted by armed groups and the facilities have been damaged, broken or stolen; some have been banned from broadcasting and even closed down. Journalists and media workers have been victims of brutality, threatened, harassed and beaten, forced to resign; some have been deported, kidnapped, abducted or detained by different armed groups or the governmental forces. Often their equipment is seized.

An increasing number of journalists and media workers are banned from entry into Ukraine or Crimea, although they are duly accredited by the State authorities.

**Recommendations**

The Press Emblem Campaign calls on:

- the Ukrainian and Russian authorities to ensure journalists and media workers can carry out their duty freely and to bring to justice those responsible for the offences and crimes committed against journalists and media workers;
- a prompt and independent investigation on the circumstances which led to the murder of the italian photojournalist Andrea Rocchelli and his Russian translator on May 24 near Slavyansk;
- the Human Rights Council to consider innovative initiative conducive to a better protection for journalists and media workers in situations of violent or armed confrontation.

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**Human Rights Council**
**Twenty-sixth session**
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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

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*1404171*

Please

# PAKISTAN: The violence against women is continue to be rampant in spite of progressive laws

1. Despite some pro-women laws introduced by the previous Pakistan Peoples' Party (PPP) government, there is no rest or respite in the chronic oppression against women in Pakistan. The true implementation of these laws in letter and spirit still remains a real challenge for the state, law and justice departments. Women are facing spectacularly high rates of discrimination and multiple forms of violence. Crimes like honor killings, rape, acid throwing, forced conversion to Islam, forced marriages, custodial torture, trafficking, domestic violence, dowry violence, abduction, forced prostitution and incest go unchecked in the country. Over 10,000 women reportedly faced different forms of violence in 2013. It is a mockery of the laws, termed as pro-women.

2. Hundreds of cases of killings/murders of women were reported in Pakistan from January 2013 to the end of April 2014. Besides these cases, 3,576 rape cases were reported from Punjab province alone during the same period while 921 women were killed in the name of honour. Around 191 were reported slain for marrying the husband of their own choice and going against their families' wishes.

3. At least 81 women were killed solely for giving birth to a girl child and more than 900 women committed suicide. There were also 105 acid attacks targeting women, 700 cases of domestic violence, and 401 cases of gang rape were also reported.

4. Minor girls and adult women remain vulnerable to the risk of abduction and sexual assault while rapists find impunity through both common and Shariah law. Across Pakistan, individuals as well as gangs and other types of groups resort to raping innocent girls and women for an array of reasons: pure lust, revenge due to alleged tribe or family offences, to avenge a rejected marriage proposal, for religious and ethnic reasons, or simply to satisfy their predatory desire as a way to exert unadulterated brutality and power. The scientifically unfounded belief that sexual intercourse with a virgin exempts the attacker from the risk of contracting the HIV virus or that it can even cure an already diagnosed infection, exposes minor girls and unmarried young women to even greater risks of sexual abuse, adding unremitting horror to the social stigma.

5. A large number of crimes against women usually unfortunately remain unreported. However, even in the case of reported crimes, the perpetrators easily manage to wriggle out from the loose grip of the law and escape punishment due to serious systemic flaws such as the absence of the rule of law, the lacunas in the implementation of the existing legislation, the widespread corruption, the insufficient political will and profound institutional incompetence, whereby the lack of a fair and equitable treatment before the law for everybody, combined with the structural bias against women make the criminal justice system acutely gender biased and discriminatory. Those women who, according to the most traditional and conservative precepts, 'dare' to report violence and other crimes committed against them, not only encounter a series of bureaucratic difficulties in the process of their legal wrangling, but even face humiliation at the hands of police, medico-legal staff and the courts at different levels. Recently, there have been reports concerning incidents where women complainants decided to take the most severe forms of protest in order to receive the deserved attention, such as setting themselves on fire against the biased and disrespectful attitudes openly shown against them by the police.

6. In fact, given the prevalence of gender biased attitudes among police officials, a large number of women who want to lodge complaint are turned away from police stations and in many cases they are tortured, abused and raped. Women victims of domestic violence encounter even higher levels of unresponsiveness and hostility by police, as well as by other actors at all levels of the criminal justice system. Since issues pertaining to the family sphere continue to be largely perceived as "private matters", Pakistan is still lacking in the legislation of a specific law against domestic violence (which mainly includes verbal offence, isolation and reclusion within the domestic walls, restriction of several rights such as financial independence and freedom of thought, forced sexual intercourse and marital rape, battering and other forms of physical beating). Police officers pressure for 'reconciliation' among concerned parties rather than filing a report and arresting the perpetrator (often these are abusive husbands but can also include in-laws, siblings and other akin relatives).

7. Countless medico-legal staff throughout the entire country are corrupt and feel no shame in altering facts and distorting medical reports in favor of powerful and often influential perpetrators. In the courtrooms lawyers leave no stone unturned to shatter the victim's sense of self-respect by asking awkward questions regarding the virginity status and past sexual history. The judicial system, particularly the lower judiciary, has strong proclivity to sexist assumptions about women. Judges allow defense counsels to openly insult the victims' characters and make sly insinuations about their costumes and behavior, especially in relation to their sexual preferences and habits. The entire criminal justice system routinely ignores the real causes behind many complaints and underestimates the consequences of gender biased attitudes, which allow all forms of violence against women to continue to occur with large acceptance and enormous impunity.

8. Horrid social customs and centuries-old patriarchal traditions coupled with religious norms also have devastating effects on women in Pakistan. Anti-women traditions like *sawara, wani, sang chati, paitlikkhi* and *watta satta,(all these customs are for gifting girls, or forced marriages of the girls to resolve conflicts and feuds)* still go unchecked in many parts of Pakistan, particularly in the rural Sindh, Balochistan, Punjab, and the country's northwestern tribal areas. The situation suggests the inability to enforce the rule of law, leaving matters in the hands of tribesmen and local elders.

9. Despite the high magnitude and severity of cases of violence against women, several state agencies have proved themselves indifferently unsympathetic to the problem, leaving women at the mercy of their fate. Pakistan is obliged by its ratification of international treaties like the Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to take action to eliminate all forms of violence against women.

10. Pakistan appears unable to relieve itself from the constant pressure received by the Council of Islamic Ideology (CII). Such council is an anti-women force, headed by hard line clergies and Islamists with track records of denying and resisting pro-women legislation. In line with the Taliban agenda, this body is bent upon stopping and snatching the rights and freedoms, whatsoever, that the women of Pakistan have secured so far through their struggle. This body has recently declared a bar on the second marriage of a man in the presence of his first wife, defining it as against religious principles. However, the existing laws require a man to have written approval from his existing wife for a second marriage. Similarly the CII is also promoting the culture of girl brides by saying that the laws limiting the age of marriage are un-Islamic. Earlier it rejected the proposals of accepting DNA testing in rape cases. The Domestic Violence Bill 2010 unanimously passed by the National Assembly, was shelved in the Senate due to the opposition by CII.

Recommendations:

- Access to justice for women in Pakistan cannot remain only confined to the access to courts or tribunals since justice should entail ensuring legal and judicial outcomes as just, transparent and equitable.

- All laws pertaining to violence against women need to be implemented through a coordinated response. Lawyers, police and members of the judiciary require proper gender sensitisation and professional orientation on pro-women laws. Police need understanding, awareness and training to minimise gender biases in their responses to cases of violence against women.

- The Government of Pakistan must criminalize Domestic Violence. Family violence cases should not be treated as "private problems".

- A comprehensive legislation against Acid Violence is needed to criminalize such heinous acts and provide justice, protection and rehabilitation services to survivors fighting their cases.

- Universal human rights, equality and the right to justice for all need to be extensively accepted and recognized, particularly in rural and tribal areas where especially cases of violence against women are often dealt with through improper and illegal courts, usually referred to Jirga Systems (private parallel judiciary systems). The Asian Legal Resource Centre calls upon the Government of Pakistan to abolish these in favour of good local power structures/systems that do not promote anti women judgments and discrimination.

- Women related legislation should recognize the principles of equality and rights specified in the constitution and the international commitments to which the State is a signatory and not be based on any biases, discrimination or patriarchal beliefs or values.

- The Council of Islamic Ideology (CII) is nothing but a bunch of dogmatic and fundamentalist religious bigots who refuse to accept reason and logic and are blind to the realities of the modern world. In the presence of the elected Parliament, there is no room for such a parallel advisory body in the constitution. The CII is an unnecessary body which must be abolished.

- The widespread and detrimental practice of early marriages needs to be monitored and stopped. The three provinces of Punjab, KPK, and Balochistan must follow Sindh and introduce a comprehensive legislation against child marriages with enhanced punishments for both the parents who precociously marry off their daughters against their will and those men who despicably seek minor girls as wives.

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**Human Rights Council**
**Twenty-sixth session**
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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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*1404175*

Please

# Thailand: Enforced disappearance during a time of lawlessness*

1. The Asian Legal Resource Centre (ALRC) wishes to bring the suspected enforced disappearance of Porjalee Rakchongcharoen, a Karen environmental activist and human rights defender (HRD) to the attention of the Human Rights Council. Porjalee disappeared after he was arrested on 17 April 2014 by park officials in Phetchaburi's Kaeng Krachan National Park in Phetchaburi province, Thailand. The park officials claim that they arrested Porjalee because he possessed wild honeycomb and six bottles of honey in excess of the law and planned to sell them, but that they released him after issuing a warning. Porjalee Rakchongcharoen did not return home after he was released and after extensive searching by his family and community members, park officials, and a special military task force, he has still not been found. The ALRC is concerned that Porjalee may have disappeared due to his long-standing activism in defense of human rights.

2. Porjalee Rakchongcharoen, also known by the nickname "Billy," is a 30-year-old HRD who has led a livelihood and human rights struggle of ethnically Karen villagers living in Kaeng Krachan district in Phetchaburi province. At the time of his disappearance, Porjalee was traveling to prepare for an upcoming court hearing in a lawsuit filed by the villagers against the National Park, Wildlife and Plant Conservation Department in the Ministry of Natural Resource and Environment and the Head of Kaeng Krachan National Park, Wildlife and Plant Conservation Office. In the lawsuit the villagers claim that in July 2011, the authorities were responsible for the destruction and burning of houses and property of more than 20 Karen families who were living in the Bangkloybon Villages in Kaeng Krachan National Park. In addition to destroying the houses and property of the villagers on 10 September 2011, Tassanakamol Aobeaom, another HRD and villagers, was assassinated. Mr. Chaiwat, the Head of Kaeng Krachan National Park, Wildlife and Plant Conservation Office, has been accused of hiring someone to kill Tassanakamol and the case is currently pending a decision by the court.

3. At this time, Porjalee Rakchongcharoen's family and the villagers have used the avenues available to them under existing Thai law to attempt to find him and secure justice. On 19 April 2014, the villagers filed a complaint with the local police regarding Porjalee Rakchongcharoen's disappearance. On the morning of 24 April 2014, his wife submitted a petition under Article 90 of the Criminal Procedure Code at the Petchaburi Provincial Court; Article 90 stipulates that various parties, including a spouse, "where any person is alleged to be unlawfully confined in a criminal case or in any other event… shall be entitled to submit a motion to the court empowered to exercise criminal jurisdiction over such locality for release of the person in question". The hearings, including of the National Park officials involved in Billy's arrest, began on the afternoon of 24 April 2014 and continuing up until the time of the submission of this statement.

4. However, Article 90 offers only limited avenues for redress. If the officials claim that they released Porjalee, then there is additional power in the to press them further. A pattern frequently seen in Thailand is that a person is arrested by the authorities, released, and then either disappeared or extrajudicially killed. This underscores the need for Thailand to ratify the UN International Convention for the Protection of All Persons from Enforced Disappearance, which it signed on 9 January 2012, and pass domestic law making disappearance a distinct crime. The lack of a formal legal and investigatory framework accounting for enforced disappearance in Thailand is part of what makes this a strategy frequently used by state officials and others to eliminate their critics.

5. The ALRC is aware that ratification of the Convention will require a series of changes to both national law and the routine practices of law enforcement and the judiciary. However, these changes are necessary in order to ensure that Porjalee Rakchongcharoen is located, and to combat impunity in the case of the disappearance of Somchai Neelaphaijit, and in the cases of 59 other persons disappeared between 2001 and 2012 documented by the Justice for Peace Foundation.

6. In particular related to the case of Porjalee Rakchongcharoen, the ALRC would like to remind the Government of Thailand that Article 3 of the Convention mandates that, "Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice." If the Convention were in force in Thailand, it would entail a more robust investigatory framework than the series of hearings which follow from Article 90 of the Criminal Procedure Code.

7. The enforced disappearance of Porjalee Rakchongcharoen in Thailand in late April 2014 took place during a period of general lawlessness and breakdown of the rule of law in Thailand. Although there have been cycles of political contention and conflict, the six months immediate prior to the submission of this statement witnessed an intensification of this conflict between the elected Pheu Thai government and their supporters on the one side (known as the red shirts), and the People's Democratic Reform Committee (PDRC), a movement led by members of the opposition Democrat Party (known as the yellow shirts). During the past six months, there were reports of detention and torture being carried out by guards at the PDRC demonstrations. There were also reports of bombs thrown into the houses of leaders on both sides. With respect to the specific topic of this submission, however, the ALRC would like to note that during this period, already vulnerable critics and HRDs have been targeted. The ongoing political strife has created a void of lawlessness in which r both state officials and others have been able to perpetrate extrajudicial violence with impunity. In a case that the ALRC previously brought to the attention of the Council, on 12 February 2014, there was an attempted assassination of Somsak Jeamteerasakul, a history professor and dissident critic (A/HRC/25/NGO/61). In mid-April, its sister organization, the Asian Human Rights Commission (AHRC), issued an appeal about a group of anti-mining activists and HRDs in Loei who were attacked in the middle of the night by a group of armed thugs. Martial law was promulgated d by the General Prayuth Chan-ocha, the Commander-in-Chief of the Royal Thai Army on 20 May 2014. Given the potential for human rights violations written into Thailand's martial law provisions, the ALRC is concerned that rather than solving the problem of lawlessness, martial law may deepen it. The ALRC wishes to highlight the importance of not allowing the suspected enforced disappearance of Porjalee Rakchongcharoen to be forgotten amidst national political contention.

8. In view of the above and in line with the commitment, in principle, that the Government of Thailand made when it signed the UN International Convention for the Protection of All Persons from Enforced Disappearance, the Asian Legal Resource Centre calls on the UN Human Rights Council to:

a. Call on the Government of Thailand to carry out a full investigation into the disappearance of Porjalee Rakchongcharoen until he has been found or the truth has been firmly and publicly established;

b. Call on the Government of Thailand to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and;

c. Request that the Working Group on Enforced or Involuntary Disappearances monitor the case of Porjalee Rakchongcharoen and other cases of disappearance in Thailand.

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* Community Resource Center, Justice for Peace Foundation in Thailand NGO(s) without consultative status, also share the views expressed in this statement.

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**Human Rights Council**
**Twenty-sixth session**
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# Written statement* submitted by Presse Embleme Campagne, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please

# Journalists need protection in order to ensure their safety

**Focus on the subject**

As of the day of submission of this written contribution (25 May 2014), 44 journalists and media workers have been killed around the world in 2014. The deadliest countries being Iraq and the Syrian Arab Republic with 5 victims each followed by the Central African Republic, Pakistan, Afghanistan and Brazil with 4 victims each and Ukraine with 3 victims. An undefined number (between 30 and 50) are detained or held incommunicado either by governmental forces or non-State actors, mainly in the Middle-East region.

In order to apprehend correctly the problems faced by journalists and media workers and thus better identify challenges and good practices it has to be kept in mind that the great majority of the media workers are killed in conflict situations, violent civil unrest or in countries where the State authorities have to face political or criminal armed movements: all kind of situations where the State cannot develop policies and practices in a regular way; on the contrary, authorities are militarily engaged in a confrontational struggle against a more or less large part of the population.

This is evident when one looks at the recent year's statistics[1] of killed journalists and media workers. In 2013, out of the 129 victims, 17 were killed in the Syrian Arab Republic, 16 in Iraq, 14 in Pakistan, 11 in the Philippines, 8 in Somalia, 7 in Egypt, 6 in Brazil, 5 in Mexico, 3 in Afghanistan, Colombia and Libya. In 2012, out of the 141 victims, 37 were killed in the Syrian Arab Republic, 19 in Somalia, 12 in Pakistan, 11 in Brazil and Mexico, 6 in the Philippines, 3 in Gaza/Israel, Nigeria, Eritrea and Iraq, 2 in Afghanistan and Colombia. In 2011, out of the 107 victims, 12 were killed in Mexico, 11 in Pakistan, 7 in Iraq and Libya, 6 in the Philippines and Brazil, 5 in Yemen, 4 in Somalia, 3 in Afghanistan, Egypt, India, Peru and in the Russian Federation, 2 in Syria and 1 in Colombia, Gaza (OPT). In 2010, out of the 110 victims, 14 were killed in Mexico and Pakistan, 10 in Honduras, 8 in Iraq, 6 in the Philippines, 5 in Nigeria and in the Russian Federation, 4 in Brazil, 3 in Somalia and Nepal and 2 in Afghanistan.

In these circumstances, there is no doubt that impunity is the fuel of the more than thousand journalists and media workers killed in the last 10 years, whether the responsible of the crimes belong to the State authorities or to a political or criminal armed group.

Due to the role journalists play in informing the public and in contributing to transparency and accountability in the conduct of public affairs, it is essential for the international community to have as many of them as possible on the ground to report and analyse specific situations so that the plurality of the reports can insure a broader image of the reality and a better understanding of the challenges of a crisis. Governments have to accept the idea that journalists are influenced by their education, cultural and philosophical background and opinions as well as by their respective editorial instructions.

**The limitations of existing international instruments**

The reports presented to the twentieth session of the Human Rights Council by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression[2] and the Special Rapporteur on extrajudicial, summary or arbitrary executions[3], as well as the report of the Office of the High Commissioner for Human Rights on good practices concerning the safety of journalists[4] clearly demonstrate that none of the existing mechanisms, at the national, regional or international level, is instrumental in combating impunity, notably against the crimes committed in conflict situations.

While all those norms, rules, policies and practices can be effectively instrumental in reinforcing freedom of opinion and expression, including freedom of the press, in a peaceful world, they suddenly become powerless when a situation of tension and armed confrontation arises in a country.

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[1] Press Emblem Campaign statistics are available at http://www.pressemblem.ch/5037.html
[2] A/HRC720/17
[3] A/HRC/20/22
[4] A/HRC/24/23

The International Humanitarian Law, even though it offers protection to journalists and media workers as civilian (in other terms as human beings not participating to the conflict) it does not provide them with a real protection for the duty they are carrying out. In reality, journalists and media workers have no protection at all since their specific role is not formally recognized.

There is an urgent need for the international community to adopt a more comprehensive approach of a global protection of journalists and media workers which could concretely combat the plague of impunity with independent special mechanisms for investigation and prosecution.

**Conclusion**

In his report[5] to the Human Rights Council, the Special Rapporteur on extrajudicial, summary or arbitrary executions invited States and relevant United Nations bodies and agencies, in consultation with all relevant stakeholders, to explore the need for a specific United Nations instrument.

The Press Emblem Campaign considers that the time has come for the international community to take further steps in order to strengthen the protection of journalists and media workers and invites the Human Rights Council to request a study to its Advisory Committee.

[5] A/HRC/20/22 par. 124

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# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

## Thailand: Coup Jettisons Courts

1. In Thailand, the legitimate and democratically elected government of Thailand has been overthrown and the military has usurped power by force. The takeover is a clear and complete violation of the constitution of Thailand. Enormous efforts had been made by the Thai people to develop a democratic constitution. The 1997 constitution was created after years of consultation with all sections of Thai society. One of the preoccupations at the time was to end the entrenched practice of the military overthrowing legitimate governments and taking power. Previously, in Thailand, there had been 18 military coups over a period of 81 years. Thwarting efforts and disappointing expectations, the military has taken over power again.

2. Among the many problems that this takeover by the military has thrown up are the place and the role of courts in Thailand today. Recently, the constitutional court of Thailand forced the resignation of the Prime Minister on the ground that she had violated the constitution in dismissing a particular official. What will the constitutional court do now that the whole constitution has been violated by the military? Will the constitutional court of Thailand declare that the military coup is illegal and therefore the military has no mandate and power to rule? Or has the constitutional council itself been brought to a halt?

3. The Human Rights Council of the United Nations needs to declare that the military coup is illegal and unconstitutional and violative of all liberal democratic principles. The council must demand that power be handed over to the legitimate government and that changes to the government should be brought about via democratic process enshrined in the constitution. The Human rights council must step in to protect the sovereignty of the Thai parliament and the independence of the judiciary.

4. Shortly after usurping power, the military made several declarations. It was declared that those who oppose the military would be brought to trial before military courts. Several offenses were also declared and the military arrested many persons and continues to arrest others. It is expected that there will be large-scale arrests of political leaders, political activists, and civil society activists. In this manner, the military has attributed to itself the powers of arrest, displacing the country's policing system.

5. All criminal justice principles and procedures have been abandoned and thus the very functioning of the criminal justice framework of the country has been paralysed. What is now taking place by way of arrests, detentions, and proposed trials before military courts is not the criminal justice framework as envisaged by the constitution but the operation of an alien and illegal system introduced by the military.

6. Among other things, the military has also declared that it will prosecute persons who campaigned against the operation of *lese majeste* and that the trials against persons arrested for such campaigns will also be brought before the military courts. Thus, the military has taken over the roles of complainant, investigator, prosecutor, judge, and executioner. Even the family of a prisoner, serving a sentence related to the *lese majeste* law, has been served with summons to appear before the military.

7. The net result is that the role of the judiciary in Thailand has been brought to a grinding halt. The people of Thailand no longer enjoy the protection of any of their rights, including the right to be adjudicated by legitimate courts that observe the principles and practices of fair trial.

8. The Human Rights Council needs to give due consideration to the fact that this coup is a violation of all the principles on which United Nations' charter is based. The sovereignty of the nation, to be exercised by a legitimately elected government, has been completely undone. The people's right for protection of human rights, in terms of United Nations conventions to which the Thai government is a party, are all being completely and blatantly violated. This extraordinary situation, in which a people of a country have lost the capacity to resort to their own courts for the protection of their rights, needs to receive the highest consideration from the council. The council needs to come to the rescue of democracy in Thailand. It must intervene to stop all trials by the military courts, and reinstate peoples' right to have all matters of legality and illegality be determined by their legitimate courts.

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**Human Rights Council**
**Twenty-sixth session**
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**Human rights situations that require the Council's attention**

# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

# NEPAL: Need for amendment of Truth and Reconciliation Law

1. The process of transitional justice in Nepal has encountered deliberate and blatant delays mainly due to the sheer lack of commitment and will of the political parties. The establishment of the Truth and Reconciliation Commission (TRC) against disappearances and the establishment of the Commission against Disappearances have been expressly mandated and provisioned by both the Interim Constitution and the Comprehensive Peace Agreement (CPA) as far back as 2006, which remain the two major instruments setting out Nepal's transitional justice process. However, a decade has passed since and Nepal is yet to implement any of these processes. A half- hearted attempt at the establishment of the TRC was resorted to in 2013, when the government came up with a completely flawed Ordinance of the TRC where even serious crimes were subjected to an amnesty, provisions were made for reconciliation to be carried out ex parte, without the consent of the victims and there were no safeguards nor guarantee of prosecution. Due to these flaws in the law Nepal's civil society and human rights organizations, after many an agitation against, rejected outright these attempts at bringing in a law, for the establishment of a Commission for Truth and Reconciliation and another for disappearances, in Nepal.

2. Nepal's apex Court, the Supreme Court, also rejected outright the provisions of this Ordinance and on 2 January 2014 in its judgment, heavily criticized some of its key provisions and it was declared unconstitutional and in violation of international human rights law. In a directive, the Supreme Court ordered that the Ordinance be repealed or amended significantly to bring it in line with Nepal's obligations under national and international law, and made strong recommendations to appoint an expert panel and to come up concrete recommendations for the drafting of a Truth and Reconciliation Bill. Further, as per the court's decision, there should be no amnesty provided if, in instances of serious crimes including rape, murder, abduction, sexual violence, mental and physical torture and forced evictions.
The government formed the expert panel, which was given 10 days and forced the panel to submit its report before the deadline following which the panel hurriedly submitted the draft recommendation within 7 days, in direct contravention of the Supreme Court orders, and therefore in contempt of Court, reintroduced the Ordinance with no amendments at the meeting of the Legislative-Parliament, not even in the least abiding by their own expert panel's recommendations. This raises grave concerns over the government's respect for the rule of law in Nepal.

3. Moreover, this move was seen as against the provisions of the Interim Constitution too, which clearly states that the Supreme Court's rulings are binding on the Government of Nepal. The Supreme Court has previously held that any mechanism for transitional justice must be in conformity with international standards, lead to accountability for serious human rights violations, and ensure victims their right to remedy and reparations, which includes the right to truth and justice.

4. The tabling of a rejected version of the Ordinance in the legislature was also done in stark contravention to several of Nepal's core international obligations being a party to several international conventions. Nepal has ratified the Convention against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR). The country has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Child (CRC). Under these conventions, the government of Nepal has responsibility to respect those obligations. But the present Truth and Reconciliation law undermines all such provisions and conventions.

5. The human rights community as well as the people of Nepal have categorically and flatly rejected this law. This law has also been rejected by the international community. It is also not acceptable to the victims and their families. Through this law, the Nepali government and the political parties are in an unscrupulous attempt to institutionalize impunity and undermine accountability for serious crimes committed during the decade long armed insurgency from 1996-2006.

6. The 2006 CPA has expressly stated that impunity would not be tolerated. It will not be encouraged. On the contrary, the government of Nepal in pushing for the enactment of this law, is engaged openly in attempts to institutionalize impunity for the perpetrators and also violating international human rights laws in the process.

7. The Supreme Court clearly mentioned in its decision that serious crimes should not be subject to amnesty. Amnesty cannot be given in serious crimes including rape, murder, abduction, sexual violence, mental and physical

torture and forced evictions, which also falls under the international crimes. The international laws forbid general amnesty too. Torture should not be given amnesty. Disappearances cannot be subject to amnesty. War crimes, crimes against humanity and genocide could not be subject to general amnesty. But the government of Nepal has started a process where human rights violators use it as a means to wash away their sins of committing serious violations, and thereby set them scot-free.

8. Moreover, section 22 of the TRC law has serious flaws. The law has provisions where serious human rights violations are subject to departmental action only. This is unacceptable. How can serious violations of human rights be subject to only departmental action? A full and fair trial needs to be held, and according to both national and international laws and legal order the guilty should be punished.

9. The section 26 of the current law contains vague language that does not reject amnesty to serious human rights violations including murder, abduction, rape and sexual violence, forced evictions, and mental and physical torture. It leaves open possibility where perpetrators could be given amnesty. Only the section 26 (2) contains exceptions from amnesty from rape. However, under the Nepali criminal code, there is a 35-day statutory limitation period on reporting rape. Even the consent of the victim, for reconciliation has not been made mandatory. It is a serious breach of the transitional justice as it should rightly be a victim centric process. Without the consent of the victim, no reconciliation can be done nor any amnesty given. Victims have the primacy in the transitional justice process. They have to decide whether they want to forgive and forget.

10. Reparation is not also established as a matter of rights but as a matter of charity in this law. There is no guarantee of prosecution under the law because the commission will write to the government of Nepal and it will write to the Ministry and again it goes to the office of the Attorney General. These provisions are in total contravention to the Supreme Court ruling.

11. Under the Nepalese Interim Constitution, each and every state institution is under obligation to pay attention to, implement and enforce the decision of the Supreme Court. This is their constitutional duty. Bringing this law is a serious violation of such duty.

12. The parliament is under the Interim Constitution. And there is separation of power in Nepalese institutions. Since Nepal has its interim constitution, the parliament could not go beyond the Interim Constitution. The decision of the Supreme Court should be respected and fulfilled.

13. Being a party to the ICCPR, the government shall provide effective remedies to the victims. There is no right to effective remedy and right to justice under the TRC law. Under the CPA, Interim Constitution and in the order of the Supreme Court, it is categorically mentioned that there has to be a separate commission for the truth and reconciliation and another commission set up for disappearances. Although in technical terms the TRC law has recognized this fact, there are no elaborate provisions in the law for the establishment of separate commissions. The law therefore remains silent on the provisions for the setting up of the Commission on Disappearances and so has the government of Nepal so far. These moves by the government are all being made against express provisions of the Comprehensive Peace Agreement. The government of Nepal therefore is acting in violation of its own constitution, its own laws of the land and against all international obligations in bringing forth the enactment of this law, which is fundamentally flawed.

14. In its decision, the Supreme Court further mentioned that disappearances have to be criminalized stating that even when Nepal has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the Nepalese Constitution has ensured the right to life and thus disappearances are in violation of the right to life.

15. Therefore, one asks, how does justice prevail in such a set-up in Nepal – which issue has now reached a turning point in its history? The victims and their families have been waiting for justice for over 8 years. Their long wait for justice has been neglected and seriously undermined by the Nepali government and the political parties. This law is worse than the TRC bill that has been completely rejected by the Supreme Court in January earlier this year in a serious instance of the contempt of court.

16. This law is not acceptable not only to the international human rights law and international community but also to the victims and their families and for the people of Nepal.

17. In bringing urgent attention from the UN Human Rights Council, the Asian Legal Resource Centre (ALRC) calls on the government of Nepal to amend the Truth and Reconciliation law as per the Supreme Court directive of 2 January 2014, and giving due regard to international human rights laws and its obligation therein. The ALRC requests the UN Human Rights Council to provide technical assistance including the advice from national and international experts to the flaws of the current Truth and Reconciliation Law for its appropriate amendment. Otherwise, the victims who had suffered from the conflict will continue to suffer from injustice given.

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[26 May 2014]

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# Thailand: Human rights under threat following coup

1. The Asian Legal Resource Centre (ALRC) wishes to raise grave concerns with the Human Rights Council about the threats to human rights subsequent to the coup launched by a military junta calling itself the National Peace and Order Maintenance Council (NPOMC) and led by General Prayuth Chan-ocha on May 22, 2014 in Thailand. The NPOMC abrogated the 2007 Constitution and installed itself as the government. Under martial law, which was put in place two days prior to the coup on May 20, 2014, there were already significant restrictions on rights and freedoms. The coup has intensified these restrictions and removed most checks on the power of the military junta. All public protest and criticism of the junta is banned. Carried out for the alleged purpose of vaguely-defined "reform," the mass arrests and arbitrary detention, passage of repressive coup orders, and extensive constriction of political freedom during the first three days following the coup indicate that the junta's vision of reform is one bereft of human rights and the rule of law. Despite the restrictions put in place under martial law and the law of the junta, Thai human rights defenders and citizens are courageously and peacefully demonstrating against the military's presence in Bangkok and other cities across the country.

2. The NPOMC immediately began a process of mass arrests of those deemed to oppose them. Under the terms of martial law, soldiers can detain and interrogate anyone for up to seven days without having to provide evidence of wrongdoing or bring formal charges. People arrested can be held at irregular places of detention, including permanent or temporary military bases or other sites designated as places of detention. Detention in irregular places means that the possibility for rights violations, including torture, forced disappearance and extrajudicial execution is greatly increased. In southern Thailand, where martial law has been in continual force since January 2004, the instrument has been used to arbitrarily detain and activists as well as ordinary citizens.

3. Those detained, or targeted for arrest and detention, include politicians from all sides of the political spectrum, red and yellow shirt activists, academics, human rights defenders, writers, publishers, and other dissidents and citizens. The methods of arrest and detention have varied widely. This has included the arrest of peaceful demonstrators in protests throughout the country, as well as a series of ongoing orders announced via public broadcast beginning on May 24, 2014, for citizens to report themselves to the military in Bangkok. In other cases, the homes of human rights defenders and other citizens have been raided by the military and the residents taken into detention. There are also growing reports that in many local areas, citizens are being summoned to report to the military authorities as well. The simultaneous use of these various methods functions to create an atmosphere of public terror, in which citizens do not know if, or when, their name will be announced on the radio or television, or when a knock on the door will arrive.

4. At this time, the complete number of those detained, as well as those released and those the authorities would still like to apprehend, has not been made available by the junta. On May 25, 2014, Colonel Winthai Suwaree, the spokesperson for the NPOMC said at a press conference that the junta will not reveal the total number of people who have been requested to report, detained, and/or released, nor the places of detention. Despite this refusal, there are more than 200 persons who have been named on various publicly-announced summons lists. The ALRC has also learned that in northern and northeastern Thailand, the authorities have issued local summons to people which have not been publicized.

5. One of the lists of summons, NPOMC Order No. 5/2014 announced on May 24, 2014, indicates that the junta is moving swiftly to criminalize thinking and action which challenges the power or the military or the role of the monarchy in the Thai polity. For example, Worachet Pakeerut and Sawatree Suksri, two academics from the Khana Nitirat, a group of law scholars at Thammasat University who work to make legal knwoledge accessible to a wide range of people, are on the list. In addition, political scientist Pavin Chachavalpongpun, philosopher Surapot Thaweesak, historian Somsak Jeamteerasakul, criminology scholar Sudsanguan Suthisorn and communications scholar Suda Rangkupan, were also named. They are each scholars who question authority and the basis of the unjust exercise of power in Thai society. The list also includes three former political prisoners who were accused of violating Article 112 (the article in the Thai Criminal Code which criminalizes alleged defamation of the monarchy) and were then pardoned and exonerated, namely Suraphak Phuchaisaeng, Surachai Danwattananusorn, and Thantawut Taweewarodomkul. Thanapol Eawsakul, writer and editor of Same Sky magazine, was also on the summons list, although he had been in custody since the prior day following arrest at a peaceful protest. The inclusion of these individuals on the list indicate

that the NPOMC is casting a wide variety of dissident citizens as its enemies. Those listed on summons to report face a maximum punishment of 2 years in prison and/or a 40,000 baht fine (appx. 9,500 USD) if they fail to do so.

6. While not all of those summoned have reported themselves, there are three people among those listed to have been summoned who are known to be detained. On May 25, 2014, the military junta confirmed that Thanapol Eawsakul, Surapot Thaweesak, and Sudsanguan Suthisorn have been sent to a miltary camp in Rachaburi province where the junta claims that they will be held for no more than seven days. While the junta has made reassurances that those who report themselves will not be mistreated, within the context of martial law and rule by the junta, this reassurance carries no weight. Any assurances of safety are further called into question by Colonel Winthai Suntharee's refusal to reveal the locations of places of detention or to provide more specific information about the precise numbers and identities of those who are detained.

7. In addition to the detention of those who have reported themselves following summons, the ALRC also wants to highlight the raid on the house of Sukanya Prueksakasemsuk and the subsequent detention of she and her son, Panitan Prueksakasemsuk. On May 25, 2014, the Prueksakasemsuk house was raided, two laptop computers were seized, and Sukanya and Panitan were arrested. Sukanya is the wife of Somyot Prueksakasekmsuk, who is curently serving an 11-year prison sentence for alleged violations of Article 112 in relation to articles published in a magazine he edited. Since Somyot was first imprisoned three years ago, Sukanya has struggled for his release and to protect the right to freedom of expression in Thailand. His son, Panitan, who has just completed a law degree at Thammasat University, has also worked on behalf of his father and others imprisoned for exercising the freedom of expression. The ALRC is concerned that their detention may herald harassment of family members of people serving prison sentences under Article 112, who are implicitly judged to be disloyal to the monarchy, and/or a sharp attack on human rights defenders working to protect freedom of speech.

8. The ALRC would like to remind the Government of Thailand of its obligations as a State Party to the International Covenant on Civil and Political Rights. In particular, article 9 bears upon the arbitrary detention described in this submission, and specifically that, "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release..."

9. The detention of Thanapol Eawsakul, Surapot Thaweesak, Sudsanguan Suthisorn, Sukanta Prueksakasemsuk, Panitan Prueksakasemsuk, and all others who have been arrested under martial law following the coup is arbitrary. If the junta has evidence that those in detention have committed wrongdoing, then they should be formally charged through the judicial system and using the Criminal Code.

10. The ALRC would also like to highlight a related, additional grave threat to human rights presented by the actions of the National Peace and Order Maintenance Council. On May 25, 2014, the junta's Order No. 37/2014 mandated that all cases of individuals charged under Articles 107 to 118 of the Criminal Code would now be adjudicated in the military court system Articles 107 to 112 describe crimes against the crown and Articles 113 to 118 describe crimes against national security. Since the September 19, 2006 coup, there has been a exponential rise in complaints brought under Article 112, which stipulates that "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished (with) imprisonment of three to fifteen years." The measure, and the threat of being charged under it, has been used by the state to constrict freedom of speech, intimidate activists, and limit human rights. As the ALRC has warned the Council in eight previous statements, the most recent submitted during the twenty-fifth session in March 2014 (A/HRC/25/NGO/61), freedom of expression in Thailand has faced legal and extralegal threats under a democratic regime. With the imposition of military rule, and the transfer of cases under Article 112 to military courts, in judgments are summary and the accused has no right of appeal, the ALRC is concerned that freedom of speech will disappear entirely and those critics who have raised important questions about the role of the monarchy in the Thai polity will face long periods of imprisonment for their thinking and speech.

11. In view of the above and in line with the International Covenant on Civil and Political Rights, the Asian Legal Resource Centre calls on the UN Human Rights Council to:

a. Call on the Government of Thailand to immediately return to constitutional rule;

b. Urge the Working Group on Arbitrary Detention to carefully monitor events in Thailand and in particular, derogation of responsibilities under the International Covenant on Civil and Political Rights, and to call on the Government of Thailand to act in accordance with the protection and promotion of human rights;

c. Urge the Special Rapporteur on the situation of human rights defenders to carefully monitor events in Thailand and in particular, the targeting of human rights defenders to safely carry out their work, and;

d. Request the Special Rapporteur on the freedom of opinion and expression to continue ongoing monitoring and research about the broad situation of constriction of rights and individual cases in Thailand and how this is affected under military rule.

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**Human Rights Council**
**Twenty-sixth session**
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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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*1404199*

Please recycle

# Situation of the internally displaced Rohingya in Myanmar

Society for Threatened Peoples is deeply concerned by the human rights and humanitarian situation of stateless Rohingya in Arakan/Rakhine State, Myanmar and in the neighboring countries.

Since June 2012 systematic and pre-planned anti-Muslim attacks have left more than 145,000 Rohingya in camps for internally displaced people (IDPs) and have produced over a million Rohingya refugees.

The anti-Islamic rhetoric led by the infamously well-known monk Wirathu and the Buddhist nationalist 969 Movement is fueling religious hatred all over the country. The government of Myanmar, despite the pressure from the international community, not only has done little to ensure and protect the basic rights of the Rohingya religious minority but it is also protecting Wirathu and the 969 Movement.

In January, the humanitarian situation in Arakan/Rakhine and the plight of the Rohingya got worse. Du Char Yar Tan a village in Arakan/Rakhine State was attacked and looted by an extremist Buddhist mob. 48 Rohingya were killed and many others injured. The international NGO and Nobel Peace Prize laureate, Doctors without Borders (MSF) reported that 22 patients were treated near Du Char Yar Tan village for severe injuries. Despite UN allegations about the incident and international pressure advocating a fair and impartial investigation, the Myanmar government refused to allow for one and proceeded with an internal investigation.

After a month, in March 2013, the government officially denied that any massacre had taken place in Du Char Yar Tan the and openly accused MSF of falsely reporting and endangering regional stability. Several protests were staged by Buddhist Arakan/Rakhine residents against MSF because of its alleged "bias" in favor of the Rohingya minority and of diffusing false information to the UN.

Using the excuse of the expiration of the memorandum of understanding the government of Myanmar banned MSF from the region, thus depriving the Rohingya of their only healthcare provider.

Banning MSF from the Arakan/Rakhine State was just one of the many attempts by the government to deny any help to the Rohingya Muslim minority and to cover up human rights violations that are amounting to crimes against humanity in Arakan/Rakhine State.

At the end of March 2014, just few days before the badly-needed and badly-organized census, an Arakanese Buddhist mob attacked homes and offices of humanitarian aid workers in Sittwe. The violence erupted when local resident observed a foreign staffer of the humanitarian NGO Malteser International removing a Buddhist flag from outside their office. The flag had not only a religious meaning but also a political one, it was indeed placed outside many buildings in Sittwe in order to show solidarity with a campaign to omit the term "Rohingya" from the census.

More than 170 staff members from international NGOs and UN agencies were evacuated from Sittwe. Their departure left about 700,000 people, including 200,000 residents of camps for displaced persons and remote areas, mostly Rohingya, without help.

The census sponsored by the UNFPA and international donors was supposed to meet international human rights standards and to allow the identification of every ethnicity in the country.

However, despite assurances from the Myanmar government to allow for the self-identification of any ethnicity, the term Rohingya was banned just one day before the beginning of the census, leaving the Rohingya without hope to be listed as such and not as Bengali.

The failure of the pilot census held in April, the ban of MSF and the attack on international NGOs and UN agencies are imputable also to the alarm caused by the inclusion of the Rohingya in the census. For some Arakan/Rakhine State political circles like the nationalist party and national religious fanatics like the 969 Movement it was clear that the only way to oust the Rohingya from the census was to put at risk the security and the public order in Sittwe. They succeeded.

The international community watched silently, something the government had surely anticipated. All the demonstrations and rallies against international NGOs were authorized by the government which for the "public security reasons" has already blocked all manifestations concerning liberties such as the press-freedom one where a journalist was arrested and an Australian reporter deported.

The census has been a failure not just for the Rohingya but also for the other religious and ethnic minorities in the country. In Kachin State, no census has been allowed to take place in areas controlled by the Kachin Independence Organization armed group, due to security reason and in part to concerns about ethnicity data. Similar problems have been registered also in Shan State.

However, in addition to being left out from the census, the exodus of international NGOs and the restrictions imposed by the government have left the entire Rohingya population without medical care, food and clear water.

In the camps, many suffer from diarrhea, skin infections and respiratory illnesses, including tuberculosis. The Rohingya are living in cramped shelters with no ventilation located in paddy fields and lowland areas which face flooding that increases enormously the proliferation of diseases during both rainy and dry season. Despite repeated appeals by humanitarian agencies and the international community, the government of Myanmar has obstructed the allocation of adequate land for relocation sites for internationally displaced persons. Potential outbreaks of measles and cholera remain a worry. Pregnant women and children are particularly at risk.

Food and clear water provided by the government are not sufficient to satisfy the needs of the registered IDPs. The unregistered IDPs rely only on international NGOs and local charity. Now that not all the agencies have resumed their work their condition is even more dire. Women and children are the ones most affected. There are too many reports about deaths of pregnant women experiencing labor complications that could have been easily prevented with prenatal visits. The effects caused by the absence of health care is visible on the skin and bones of malnourished children and in the number of deaths.

Since the departure of MSF the Myanmar government has arranged sporadic visits to the IDP camps in order to deliver some medical help, but the Rohingya are highly traumatized and they don't trust the government doctors. Rumors about suspect Rohingyas' deaths in the Sittwe hospital have spread all around Arakan/Rakhine State. Rohingya worry Buddhist doctors and nurses will hurt or even kill them and even if it is almost impossible to prove that those death were not accidental it is necessary to recognize that the Rohingya are not treated like Buddhist patients. Rohingya are hospitalized, always for the sadly famous security reasons, in a different section of the Sittwe hospital where they have to wait ages for a doctor willing to visit a Muslim and were professional nurses are extremely rare.

Instead of cooperating with the international community in order to find a peaceful solution for the religious, political and economic conflict present in the Arakan/Rakhine State the Myanmar government is promoting discrimination and supporting anti-Muslims campaigns led by the Arakanese Nationalist party which aims to create a Buddhist army and the 969 Movement which is promoting an interfaith marriage ban.

Society for Threatened Peoples urges the Human Rights Council to call on the Government of Myanmar to:

• End immediately human rights violations and resolve the grievous situation of Muslim minorities in the country with particular emphasis on the Rohingya religious community.

• Revise legislation as necessary, in particular laws that discriminate against particular groups.

• Redraft the 1982 Citizenship Law and ensure that state policies regarding children, women and family reflect Myanmar's international obligations.

•Lead a public information campaign promoting tolerance and religious non-discrimination.

•Condemn and dispel hate speeches and propagandas against all ethnic and religious groups.

•Fully, impartially and fairly investigate and persecute those responsible for serious abuses and human rights violations against the Rohingya.

•Take action against the 969 movement and other organizations that may be implicated in anti-Muslim violence.

•Allow the access and the return to all international and national organizations to all those in need, with special focus to internally displaced person camps.

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Please recycle

# Human Rights Situation in Viet Nam

Vietnam has signed several international human rights conventions, for instance the International Covenant on Civil and Political Rights or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was elected into the Human Rights Council in November 2013. Despite positive intentions by the government to improve the human rights situation in Vietnam, the overall human rights record remains poor. There are many people imprisoned for expressing their opinion, political attitude or religious belief.

The Vietnamese government represses religious beliefs in unregistered churches by imprisonments and the use of violence in order to force individuals to renounce their faith. In the past, there have been several reports about church demolitions and the confiscation of property. Further, the government uses a specialized religious police force and has established national security laws to suppress independent church followers.

Officially, everyone has the right of free speech as it is guaranteed by the new 2014 constitution. However, the Vietnamese government has launched several laws that give authorities the opportunity to persecute potential dissidents. Article 79 ("subversion of the administration"), 87 ("undermining national unity") and 88 ("conducting propaganda against the state") of the penal code are often used to silence critics. There is hardly any chance for government-critical voices to use their right of freedom of speech, as it is guaranteed by the article 19 of the UN International Covenant on Civil and Political Rights, which is also signed by Vietnam. In addition, prison conditions are extremely harsh. Trials fall short of internationally accepted standards. There is a lack of access to medical care.

Further, public media is fully regulated by the state. Most of the editors, publishers or journalists are members of the ruling Communist Party of Vietnam. The one-party state controls press and media and misuses it for its own messages. On September 1st of 2013, the decree 72 was launched for total surveillance of the internet. The decree restricts internet users to share and comment the latest news on the internet. Officially, the decree was issued to enforce copyrights. In reality, it can be used by the government to prevent and punish the spreading of unwanted content. In March and May 2014, four arrests of bloggers were made for posting articles "with bad content and incorrect information that reduces prestige and trust in state agencies".

Legislatively, the government allows freedom of religious belief as well as non-belief. However, the government requires the registration of all activities by religious groups and uses this requirement to restrict activities. Despite some positive changes over the past decade, the Vietnamese government continues to routinely persecute individuals for their religious activity or religious freedom advocacy. The government often refers to article 258 (Abusing democratic freedoms to infringe upon the interests of the State) to imprison followers of religions that are not officially recognized. In addition, decree 92 helps the Vietnamese authorities to reinforce control over religious communities and the spread of religion. Since January 1st 2013, when the decree was updated, each religious community that wishes to gain legal status has to announce and to register every single activity and step of organisation (e.g. ordination and ceremonies, donations, expansions of religious venues). For the government, this gives the opportunity for total control. Furthermore, in order to obtain legal status, the new decree requires that a religious group has to have 20 years or more of "stable" religious meetings, meaning a spotless criminal and administrative record, assessed by a commune-level peoples' committee.
In 2013, the targets of persecution were the Unified Buddhist Church of Vietnam, Hoa Hao and Cao Dai, Khmer Buddhists, Catholic and Protestant house churches in the Central Highlands and Hmong Christians.

There is only one Hoa Hao group that is officially recognized by the government. Hoa Hao Buddhists of other independent communities are being threatened by harassment, discrimination, loss of jobs, restriction of celebrations, prohibition of public readings and raids. Followers were beaten, pagodas were shut down and properties have been confiscated or destroyed. Followers of independent groups like the Hoa Hao Central Buddhist Church have been arrested and sentenced to terms of up to four years for staging hunger strikes, distributing the writings of their founding prophet, holding ceremonies and holiday celebrations, or interfering as police tried to break up worship activities.

In July 2013, the police raided a temple in Tien Giang province of an independent branch of the Cao Dai church. The Long Binh temple was closed and its property turned to the state-approved Cao Dai group.

There are ongoing restrictions by Vietnamese authorities on the language, culture and religion of the ethnic Khmer Buddhists. In 2013, Vietnamese authorities targeted Ta Set and Prey Chop temples in the Soc Trang province. Several Monks have been defrocked, four were arrested and sentenced up to six years in prison, others are seeking asylum in other countries.

In November 2013, the government sentenced four ethnic minority Montagnard members of the Ha Mon Catholic movement to between six months and nine years in prison for "undermining national unity". Previous arrests of eight members of an independent Catholic movement were made in May, resulting in their imprisonment for three and eleven years for "undermining unity" and "sowing ethnic and religious hatred". The police and local officials in Kontum and Dak Lak province continue their campaign to prevent the growth of the Ha Mon Catholic community. In recent years, the Vietnamese government has tried to stop the growth of Protestantism in the Northwest provinces. Religious leaders reported increased threats and restrictions on evangelism and pressure on new converts to recant their faith.

In March 2014, arrests of three Hmong Christians were reported, who were subsequently sentenced to 15, 18 and 21 months in jail for defying a government campaign, thereby forcing the ethnic minority to return to older funeral practices.

Many of the 53 ethnic minorities living in Vietnam (approximately12 million people) must fear persecution due to ethnicity and religious belief. They are often followers of prohibited Christian or other churches. Additionally, following the coffee boom beginning in 1996, more than 400,000 members of the majority Kinh population have been settling in the Dak Lak province in the Central Highlands. There, the number of the minorities living here has been steadily reduced, from originally 99 percent to barely 30 percent of the total population.

Over the past years, there have been countless repossessions of farm land due to coffee cultivation. The farmers who traditionally lived from the subsistence economy are steadily driven out by the new settlers from the plains, who take over the most fertile tracts.

The Society for Threatened Peoples therefore calls on the UN Human Rights Council to urge the Vietnamese government to:

- Immediately release all political and religious prisoners, including those imprisoned or detained on account of their advocacy of human rights;
- Publicly commit to respect the right to freedom of expression;
- Take steps to ensure that human rights defenders, peaceful activists and religious followers are free from violence, discrimination and the threat of criminalisation;
- Allow all religious groups that do not wish to affiliate with official organizations to organize and operate independently without restrictions or harassment;
- Revise or repeal ordinances, decrees, and criminal code provisions that empower local security police to arrest, imprison, and hold citizens in administrative detention for vague national security or national solidarity offences;
- Ensure that the Internet decrees, the Press law and the Publishing law are in line with the international human rights law and standards;
- Suspend the execution of all death sentence and abolish the death penalty.

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**Human Rights Council**
**Twenty-sixth session**
Agenda item 7
**Human rights situation in Palestine and other occupied Arab territories**

# Joint written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights, Union of Arab Jurists, non-governmental organizations in special consultative status, Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

## Denial of Family Unification

BADIL Resource Center, on behalf of 14 Palestinian and international human rights organizations, would like to address the pressing issue of denial of family unification. As recognized within Article 16 of the *Universal Declaration of Human Rights*,[1] the family unit is the fundamental societal group, and as such is entitled to protection by States. In the context of refugees, family unification is crucial in restoring the dignity to the life of the individual and laying secure foundations for the integration, or reintegration, of displaced communities.[2] To this end, human rights law acknowledges the need to strengthen the family unit, and this is reflected in specific State obligations to keep families together, as well as to reunify them if separated.[3] In direct contravention of these legal obligations, from its occupation of the Gaza Strip and the West Bank including East Jerusalem in 1967, Israel has consistently and deliberately enforced an arbitrary separation of Palestinian family members.

In 1991 Israel imposed new requirements demanding Palestinians from the occupied Palestinian territory be in possession of a permit in order to enter Israel, including occupied and annexed East Jerusalem. With the introduction of closures and checkpoints, Palestinians found it increasingly difficult to travel to East Jerusalem and Israel, prompting an exponential rise in the number of family unification applications. The ongoing construction of the Israeli Annexation Wall compounds this issue further, making it virtually impossible for Palestinian residents of the West Bank to visit family members who live in East Jerusalem or Israel without the necessary permit.

Therefore, Israeli-administered family unification procedures are the only available avenue for Palestinians who find themselves separated from their families, and the current legislative basis for these procedures is provided by the *Citizenship and Entry into Israel Law (Temporary Provision)*. This law – passed by the Knesset (the Israeli parliament) in July 2003 and renewed annually up to the present day[4] – prevents Palestinians with West Bank or Gaza Strip IDs, or residents of "enemy states" (Lebanon, Syria, Iran, and Iraq)[5] from gaining Israeli citizenship or permanent residency by way of marriage to an Israeli citizen. The law only allows for the granting of permits to reside or stay in Israel for purposes of medical treatment or fixed-term employment for a period which cannot cumulatively exceed six months.[6]

Prevented from acquiring permanent residency status with their families in Israel or East Jerusalem, Palestinians from Gaza and the West Bank must make impossible choices between living separately from their spouses and children, living illegally with their spouse in Israel or East Jerusalem – in constant fear of arrest and deportation – or to have their spouse move to live with them, which is also illegal on account of a military order prohibiting Israelis from entering the occupied Palestinian territory.[7] This latter option is also likely to result in the revocation of the individual's Jerusalem residency status and the numerous social benefits which accompany it. Moreover, the provision acts retroactively, applying also to couples who had submitted applications prior to the bill's ratification by the Knesset. Those applications approved, but not yet authorized for permanent residency status, remain frozen. This has left those applicants hanging in limbo, at the stage of short-term temporary residency permits but with little prospect of attaining residency despite Israel already deeming them suitable candidates. According to Ha'aretz, between 16,000 and 21,000 Palestinian families are affected in this way.[8]

As it currently stands, the only way in which Palestinians of the occupied Palestinian territory can acquire Israeli citizenship or permanent residency status in Israel or East Jerusalem is through collaboration with the State.[9] At the discretion of the Minister of the Interior, temporary-stay permits can be issued to Palestinians, affording short-term visitation rights, though these permits do not entitle the holder to any social rights or health insurance, and are conditional on their ability to satisfy both "center of life" and security requirements. In addition, though permits are also available to children under 14 years old,[10] these merely allow a child to remain within Israel or East Jerusalem until they reach the age of eighteen, with the provision failing to specify which legal status is to be accorded at that juncture.

The legislation's Second Amendment provides for permits to be granted to otherwise ineligible persons in the event of special humanitarian reasons,[11] with such decisions being made by a committee consisting of individuals from bodies including the Judiciary, Security Services and Ministry of Defense. However, the amendment specifies that being married to – or having children with – a person who is lawfully present in Israel does not constitute a special humanitarian condition. Moreover, the provision also states that permission to stay or reside in Israel or in East Jerusalem may be denied by the Minister of Interior if activities liable to endanger the State have been carried out within the applicant's area of residence. Following this amendment, in 2008 the Israeli government passed a resolution according to which persons registered as residents of the Gaza Strip or who have been living in the area are no longer eligible to apply for family unification. The 'justification' for this decision was that the Gaza Strip is considered to be a

region where actions against the State of Israel are perpetrated, and its result is that Palestinians with Gaza ID-holding spouses have been completely denied of their right to live with their family in Israel or in East Jerusalem.[12]

A holistic consideration of Israel's approach to family unification – both for Palestinians residing in Israel and those residing within the occupied Palestinian territory (including East Jerusalem) reveals a clear and highly discriminatory pattern of behavior. Indeed, review of the historical background and contemporary reality surrounding family unification paints a picture of ever-tightening restrictions on the ability of Palestinians to enjoy the most basic of human rights, that of a family life. This steady erosion of democratic principles has ultimately resulted in many thousands of Palestinians suffering great hardship and emotional distress which intrudes on all aspects of life.

Moreover, the effects of such policy are also felt beyond the confines of individual family units, as legislation such as the *Citizenship and Entry into Israel Law* damages the social and cultural bonds which hold societies together. Israel's family unification policy can be seen as a blatant attempt to reduce the Palestinian population in Israel and the occupied Palestinian territory in order to secure a Jewish demographic majority. It is important to note that forced population transfer is not restricted to physical force:

> [...] but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.[13]

Therefore the undersigned organizations urge the Council to:

- Call upon Israel to cease its policy of denying residency rights to Palestinian inhabitants of East Jerusalem, the remainder of the West Bank, the Gaza Strip and Israel proper;
- Ask the Special Rapporteur on the Human Rights of Internally Displaced Persons to conduct an investigation within the occupied Palestinian territory, as well as in Israel proper;
- Develop and implement effective measures to bring Israel into compliance with its obligations to international humanitarian and human rights law, and particularly address Israel's policies of arbitrary residency restrictions;
- Condemn the Israeli residency policy towards the Palestinian population of East Jerusalem, along with its residency policy towards the Palestinian populations of the remaining occupied Palestinian territory, which amounts to forced population transfer.

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* Occupied Palestine and Golan Heights Advocacy Initiative, Addameer Prisoner Support and Human Rights Association, Defence for Children International - Palestine Section NGO(s) without consultative status, also share the views expressed in this statement.

[1] Torsten Heinemann and Ursula Naue, "Immigration and Family Reunification: The International Legal Framework," Immigene, November 8, 2008, http://immigene.eu/immigration-and-family-reunification-the-international-legal-framework.
[2] UNHCR, "Family Reunification in the Context of Resettlement and Integration" (UNHCR - United Nations High Commissioner for Refugees, June 21, 2001), http://www.unhcr.org/3b30baa04.pdf.
[3] Heinemann and Naue, "Immigration and Family Reunification: The International Legal Framework."
[4] On March 19, 2014, the Israeli government decided to extend the validity of the Temporary Order for another year.
[5] Mossawa Centre, "Policy Paper: Nationality and Entry into Israel Law (Temporary Order)" (Mossawa Centre, 2012).
[6] Amjad Alqasis and Nidal Alazza, Denial of Residency- Forced Population Transfer: The Case of Palestine, BADIL Resource Center for Palestinian Residency and Refugee Rights, http://www.badil.org/en/documents/category/35-publications?download=1097%3Awp-16.
[7] Commander of IDF forces, Order 378 - Regarding Defense Regulations (Judea and Samaria), 5730 Proclamation Regarding Closure of Area (Prohibition on Entry and Stay) (Israelis) (Area A), 5 October 2000.
[8] Gideon Alon and Yair Ettinger, "Cabinet Extends 'Unsoftened' Nationality Law by Six Months," Haaretz, July 19, 2004, http://www.haaretz.com/print-edition/news/cabinet-extends-unsoftened-citizenship-law-by-six-months-1.128828.

[9] The State of Israel, The Citizenship and Entry Law (Temporary Provision) 5763-2003 Section 1.
[10] The State of Israel, Nationality Law, 1952, http://www.israellawresourcecenter.org/israellaws/fulltext/nationalitylaw.htm.
[11] State of Israel, "The Citizenship and Entry Law."
[12] Citizenship and Entry into Israel Law (Temporary Order) 5763- 2003 – Validity Extension.
[13] International Criminal Court, 'Rome Statute of the International Criminal Court: Elements of Crimes' (International Criminal Court, 2011), Article 6(e).

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**Human Rights Council**
**Twenty-sixth session**
Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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*1404494*

Please recycle

# Republic of Korea: State's systematic segregation policy and law results in 513 deaths in a 'concentration camp'*

1. As a result of industrialization and urbanization in the Republic of Korea, the society faced a rapid growth of capital which triggered massive migration from the rural areas to the urban areas. Those migrants took up residence the suburbs of the city and constructed a slum area. The government identified those who did not have proper jobs and lived in the slums as 'guttersnipe' and wiped them out under the name of social purification projects. The dignity and liberty of human being was therefore denied and the projects were the policy of the then military government to put the guttersnipes into a welfare facility which was running a *de facto*, 'concentration camp'. The then Ministry of Home Affairs (currently the Ministry of Security and Public Administration) enacted Ordinance no. 410 in 1975 which allowed arbitrary detention of the guttersnipes under the guise of welfare and moral education. However, the result was that mainly the poor were targeted by public officials , deprived of their liberty by being forced to be detained in such facilities where they were exposed to extreme violence, including sexual violence, murder, slavery, human trafficking and being labeled as criminals.

2. The government established squads consisting of the police and public authorities that indiscriminately took those who were sleeping or begging on the streets and those who failed to produce National Identity Cards, when being questioned, to concentration camps located nationwide, which was not in accordance with the law. The society at that time took it for granted under the circumstances where the military took the power after the coup. Although it was clear human trafficking led by the military government under the name of 'for their welfare', the society accepted it without criticism since it saw the guttersnipes as a threat to society. One such example is the case of Hyungje Bok-ji-won (Brother Welfare facility) located in Busan.

3. The government's systematic segregation policy and the existence of concentration camps subsidized by the government budget were accelerated prior to the Asian Games held in 1986 and Seoul Olympic Games in 1988. Former President Chun Doo-hwan, a former military general who took power in a coup set up one of national priorities for 'social purification projects' and segregated and detained the guttersnipes and people with disabilities to the concentration camps in order to show the 'image' of the Republic of Korea to the world. The government segregated the 'national' and 'non-national' and the non-nationals were systematically targeted and put into those camps. They were mainly social vulnerable groups of people such as the poor, homeless and people with disabilities.

4. Mr. Han Jong-sun (39 years old), one of survivors from Hyungje Bok-ji-won started holding a sole protest demanding the truth be examined in front of the National Assembly in 2012. Mr. Han was detained together with his sister in 1984 when he was 9 years old. Mr. Han's father was also detained one year later. The person running the Hyungje Bok-jo-won was arrested and charged with fraud of the government subsidies and enforced slavery against those who were detained in 1987. Afterwards, at around 3,000 detainees at that time were sent to another facility (orphanage or mental treatment facility) and those who had families were sent back to their homes. Mr. Han spent his youth in an orphanage and was not aware of the whereabouts of his family members. It was only in 2008 when Mr. Han was able to find his sister and father who had been in a mental hospital since 1987. Both of Mr. Han's sister and father were exposed to the extreme forms of violence, sexual violence, enforced slavery, inhuman and degrading treatment and they could not endure or overcome such violence while they were in the Hyungje Bok-ji-won. Mr. Han, the survivor from the camp started speaking out the government policy of segregation and running such concentration camps in 2012.

5. The then opposition political party conducted a fact-finding mission. According to its report, in the year of 1986, there were 3,975 detainees in total in Hyungje Bok-ji-won and 3,117 detainees out of total number were taken by the police, 253 detainees out of total number were taken by the local public officials. Thus, 3,370 detainees out of 3,975 (almost 85 percent) were arbitrarily deprived of their liberty by the law enforcement agencies and public officials in the Hyungje Bok-ji-won where detainees were not recognized as human beings. In addition, for the 12 years in which the concentration camps were run from 1975 to 1986, 513 detainees died. This number is an official figure submitted by the Hyungje Bok-ji-won to the political party, when being inquired. However, the real figure of those died in the camp is expected to be much more since many death certificates revealed that the reason of death was not caused by physical attack but by heart failure. One family member recently testified that his brother who had hearing loss were taken and

died in three days since his detention in the camp. It was reported that bruises over his whole body were found but the reason of his death was written as a heart failure in the death certificate.

6. In fact, the misery of such concentration camps was made public by chance. In January 1987, while walking on a mountain, one prosecutor witnessed that a group of people were digging in the mountain under the surveillance of other people not wearing any uniform and secretly initiated an investigation. Meanwhile, it was known to the public after the media reported that one detainee was beaten to death and 35 escaped from the Hyungje Bok-ji-won. At the end, the head of the concentration camp was convicted and received 2 years and 6 months of imprisonment. The charges were fraud of the government subsidies but not illegal detention. The then investigating prosecutor who interviewed with the media recently broadcasted in 2014 testified that he was pressurised to stop further investigation while he was in process of investigation from various government institutions such as, the Blue House (Presidential office), Mayor of Busan city government, the then Minister of Home Affairs and the Intelligence agency. Thus, no indictment was made in accordance with the law due to political pressure. Thus, other charges except fraud against the head of the camp were omitted from the indictment. No proper investigation was carried out. At least it was deemed to be impossible since the government had characteristics of military dictatorships.

7. In relation of the legality of detention of guttersnipes in the camp, the Supreme Court took the view that their detention was legal on the grounds of the ordinance of the Ministry of Home Affairs and the government policy and quashed the criminal liability of the dead of the camp and sent it back to the Daegu High Court (Court of Appeal) in March 1998 (Supreme Court 87Do 2671). In July, the High Court ruled that the Hyungje Bok-ji-won was not recognized as a social welfare facility since it did not get due approval and therefore the guttersnipes were illegally detained and the head of the camp was criminally responsible (88No144). In November, the Supreme Court again adjudicated that the guttersnipes were not illegally detained and the head of the camp was not criminally liable and quashed again and sent it back to the High Court (88Do1580). In March 1989, the High Court ruled that the relevant personnel were criminally responsible for detention (88No593). In July 1989, the Supreme Court quashed again and adjudicated that enforced slavery and running concentration camp were not criminally responsible for depriving the liberty of the guttersnipes (89Do698). It is very unusual that the decision of both appellate court and Supreme Court were in conflict back and forth even though the court system is hierarchical, but the final decision of the Supreme Court clearly opined that the guttersnipes were not deprived of their liberty.

8. Mr. Han, in support of the others, was encouraged to describe what he had experienced in the camp and published a book in 2012 and a committee consisting of civil society organizations was formed and has been asking for the real truth of the Hyungje Bok-ji-won. Since then, around 200 survivors from the camp who were dispersed nationwide have recently been encouraged to start talking about their traumatic experience in the camp and asking for further the restoration of their honour and state responsibility. A special law was drafted and submitted to the National Assembly in March 2014. Meanwhile, the Ministry of Security and Public Administration (formerly Ministry of Home Affairs) expressed its opinion that a Ministry responsible for the special law should be not the Ministry of Security and Public Administration but the Ministry of Health and Welfare. It is deemed to be the will of the Ministry that it would not investigate human rights violations taking place in the Hyungje Bok-ji-won for 12 years in the past but it would deal with survivors from the camp by providing financial subsidies for them.

9. The substantial truth of the case in the matter is that the security and liberty of vulnerable groups of society had been arbitrarily deprived by the police and public officials, not in the court of law but in the Ordinance of Ministry No. 410 in 1975 and they were exposed to torture, sexual violence and other forms of extreme violence in the camp and their freedom was not rested on their own but on the government as well as the head of the camp financially subsidized by the government. However, the concentration camp, Hyungje Bok-ji-won is only one out of many of such existed during that time and nobody knows the number of such camps in nationwide and how those guttersnipes were treated inside the camp. Therefore, it is the duty of the state to investigate human rights violations occurred in the Hyungje Bok-ji-won as a priority and in order for the state to do that, the draft law needs to be adopted at the National Assembly.

10. In addition, it is now time for the government as well as society to rethinks the government policy that accommodates the vulnerable group of society such as the persons with the disabilities in welfare facilities without creating conditions that provide any option to choose based on their self-determination. Forced choice is not a choice and the failure to provide environments that a person can choose on their own will only means that the freedom is not freedom at all.

11. The Asian Legal Resource Centre together with a committee for the real truth of the case of Hyungje Bok-ji-won consisting of civil society organizations call on the government of the Republic of Korea to:

a. Pass the Special Law in relation to the case of Hyungje Bok-ji-won so that a proper and thorough independent investigation carry out;

b. Extend its independent investigation to other facilities in general in nationwide;

c. Restore the honour of those who were arbitrarily detained in such concentration camp based on findings through independent investigation;

d. Make public apologies with Busan City government and take actions to prevent repetition of such atrocities from reoccurring;

e. Provide medical care to those who have been suffering from post traumatic stress disorders;

f. Establish a monument to commemorate those who were dead in such facility and a foundation to support the family who lost their family members and those survivors who have been suffering from trauma;

g. Change its policy and relevant laws and regulations that continue segregating the vulnerable group of society to such facilities, and;

h. Take affirmative measures to respect the freedom of choice of the group and provide necessary conditions where they can make such decision on their free will.

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* Dasan Human Rights Center, Committee against Institutionalising Disabled Persons, A Committee of Past Wrong Doings of MINBYUN-Lawyers for a Democratic Society, Democratic Legal Studies Association, Disability and Human Rights in Action, Solidarity Against Disability Discrimination, South Korean Human Rights NGOs Network, People's Coalition for Media Reform, The April 9 Unification & Peace Foundation, Busan Solidarity Against Disability Discrimination, Sarangbang Group for Human Rights, Catholic Human Rights Committee, Disability Discrimination Act of Solidarity in Korea, Information & Culture Nuri for Disabled Koreans (South Korea), Korean Lawyers for Public Interest and Human Rights, Cultural Action, The Disability Rights Advocacy Center of Korea, Association of Korea Doctors for Health Rights, Local NGOs' Network for welfare and Busan Solidarity for Social Welfare NGO(s) without consultative status, also share the views expressed in this statement.